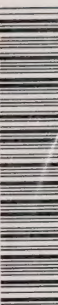


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Ontario Legal administration - capital, into future deposits

Hearings

v. 23

April 1967







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**ROYAL COMMISSION**  
**INQUIRY INTO LABOUR DISPUTES**

543c

**HEARINGS HELD AT**  
**TORONTO**

**VOL. NO.**

**23**

**DATE**

**April 18, 1967**

*Official Reporters*

**NETHERCUT & YOUNG LIMITED**  
**48 YORK STREET**  
**TORONTO 1, ONTARIO**  
**TELEPHONE 363-3111**





IN THE MATTER OF The Public  
Inquiries Act, R.S.O. 1960,  
Ch. 323

- and -

IN THE MATTER OF an Inquiry  
Into Labour Disputes

BEFORE: The Honourable Ivan C. Rand,  
Commissioner, at 123 Edward  
Street, Toronto, Ontario,  
on Tuesday, April 18th, 1967

E. Marshall Pollock Counsel to the Commission

APPEARANCES:

Mr. Stewart	)	Canadian Manufacturer's
Mr. Hicks QC.	)	Association
Mr. Clawson	)	
Mr. Henley	)	
Mr. Woxman	)	

Mr. Isaac Fram	)	Private Individuals
Mr. Wallace Fram	)	





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Toronto, Ontario

Tuesday, April 18, 1967

---On commencing at 10:00 a.m.

MR. POLLOCK: Before we turn to an examination of the United States, I wonder if your organization has anything to say about the suggestion that the time when a company employs strike breakers.

MR. HICKS: Well, as a practical matter, I suggest that it is without foundation. A great many strikes that we are concerned with are, you see, you have the situation, for example, where you have a factory with multi-unions, one of these unions strikes and attempts to persuade others, or dissuade them to cross the picket line. This is particularly important in affecting delivery, receipt of merchandise or parts and may ultimately result in keeping goods out of the plant.

You have the further situation where the factory are hourly rated and are not on strike but on account of their colleagues who are on strike try to dissuade employees from crossing and picket line, who again have no interest in the strike but on account of union loyalties feel it is their duty to persuade others.





1 MR. POLLOCK: I suppose they  
2 have some obligations to the trade union.

3 MR. HICKS: Yes, I can cite  
4 in that connection, the Toronto Civic Workers'  
5 strike where the inside people, as I recall,  
6 negotiated and completed a contract and the  
7 outside people rejected the offer and sought  
8 to prohibit the inside people from honouring  
9 their agreement and going to work.

10 We have had the situation,  
11 ironical as it is, where the factory people  
12 have restrained the office people who make  
13 up the payroll from getting into the office  
14 thus depriving themselves of the issuance  
15 of their regular pay cheques. We have even  
16 had to negotiate the opportunity for them  
17 to cross the picket line in order to make  
18 out the pay and have the cheques issued.

19 THE COMMISSIONER: Well, that  
20 is so absurd that I am astonished you have  
21 not taken steps to prevent that, not only  
22 by injunction, but by calling on the police  
23 force.

24 MR. HICKS: Well, sir, normally  
25 an injunction application has been made. In  
26 terms of the police, we have dealt with that  
27 to some extent in our submission and, quite  
28 frankly, we find here a great ad-mixture of  
29 sentiment, of attitude, of interest and  
30 responsibility.





1 THE COMMISSIONER: I notice in  
2 one of the American statutes they recite that  
3 fact, the absence of sufficient police force  
4 to handle a situation of that sort.

5 MR. HICKS: There is a mis-  
6 conception on the part of a great many of the  
7 police forces as to their so-called neutrality  
8 position. Even where they are prevailed upon  
9 and even through the Crown Attorney, sir, we  
10 find a reluctance to accept the responsibility  
11 and police the picket line. So that,  
12 in answer to your question, Mr. Pollock,  
13 you have a multitude of situations  
14 where that proposition really is untenable:  
15 it is not supported in fact. I would say  
16 that the majority involve that class of  
17 situation.

18 I can think of all kinds of  
19 cases. Mr. Clawson had one, Page-Hersey. I  
20 can think of several of the auto companies  
21 where their dies are located in a struck  
22 plant. Now, it is absolutely vital to  
23 their production that those dies be released  
24 from that employer and put into use elsewhere  
25 unless they are to lay off literally thousands  
26 of their employees. They work to very close  
27 tolerances in their production schedule and  
28 very close shipment and delivery tolerances.

29 MR. POLLOCK: Where was the  
30 strike in that certain case?



1 MR. HICKS: If I can recite one -  
2 Page-Hersey, for example, Ontario Malleable,  
3 Dominion Diecasting in Wallaceburg, where  
4 there were dies which were absolutely vital  
5 to the continuing production of parts essential  
6 to, in one case, the automobile industry and  
7 in Mr. Clawson's case - he can speak to this.

8 MR. POLLOCK: Were these  
9 products that were made by the plant and then  
10 sent somewhere else or were these part of the  
11 functioning or the operation of that particular  
12 plant that was on strike, that you sought  
13 to have transported some other place so that  
14 you could continue the operation of the struck  
15 plant?

16 MR. HICKS: If I may speak;  
17 I am going to ask Mr. Stewart to speak to one  
18 and Mr. Clawson the other. In my experience  
19 it involved the use of a die and the diecasting  
20 operation, fabricating in part or in total of  
21 a part to be placed into a finished product  
22 in another plant, the plant on strike being  
23 a supplier, and the ultimate fabricating  
24 plant requiring that part to finish its  
25 production.

26 MR. POLLOCK: And the plant  
27 that was on strike sought to continue its  
28 production in another plant?

29 MR. HICKS: Quite, by seeking  
30 the die. Here we have even run into the ---





1 MR. CLAWSON: I think you have  
2 misunderstood the question. Mr. Pollock stated  
3 that the plant that was on strike was attempting  
4 to continue its production in another plant.  
5 That was not the case.

6 MR. HICKS: I am sorry, that  
7 was not the case. The contract between A and  
8 B; A, the purchaser and B, the manufacturer  
9 of the part, the die is owned by A, the purchaser,  
10 being used by B in the production of the part.  
11 B is on strike. A says "We have to have our  
12 die. It is our die, we own it, we paid for  
13 it, it is ours, you only have it for use in  
14 producing this part, we would like to have it  
15 and make it available to another manufacturer  
16 to supply us with the parts".

17 THE COMMISSIONER: They weren't  
18 allowed to take it out of the plant?

19 MR. HICKS: No, sir, and we  
20 have even had the sheriffs decline or refuse  
21 on a replevin order to assert their authority  
22 to have the die, or whatever it is, released.  
23 Now, Mr. Stewart, you have had other experiences  
24 or does that represent it?

25 MR. STEWART: That is the case.

26 MR. CLAWSON: Mr. Commissioner  
27 and Mr. Pollock, the two situations that we  
28 have personally been involved in in the past  
29 year, in one case it was a legal strike.  
30 There were three situations: a) we had a lot





1 of empty cars in the plant on which we were  
2 paying demurrage, we wanted to take them out,  
3 we couldn't.

4 MR. POLLOCK: Railroad cars?

5 MR. CLAWSON: Railroad cars.

6 MR. HICKS: They were empty?

7 MR. CLAWSON: They were  
8 empty. b) We had, I think, 40 or 50 loaded  
9 cars waiting to get into the plant which had  
10 not got in before the strike started. We  
11 wanted to get them in and get them unloaded  
12 to avoid paying demurrage charges on those.  
13 Incidentally, we were not attempting to operate.  
14 c) We had another situation such as Mr. Hicks  
15 described where a quantity of material had  
16 been manufactured for a customer before the  
17 strike broke out. This was urgently required  
18 by him. If he didn't get it, his own operations  
19 were going to be shut down and, in turn, the  
20 automotive industry would have shut down.  
21 We wanted to get that out.

22 MR. POLLOCK: Is this the  
23 same situation?

24 MR. CLAWSON: All the same  
25 situation.

26 MR. POLLOCK: Was it Page-Hersey?

27 MR. CLAWSON: Yes. We finally  
28 did obtain an injunction and we were able to do  
29 all three things. But without an injunction  
30 we would not be able to do it because it



1 happened that in that community the police  
2 did not enforce the rights of the company  
3 to permit access.

4 MR. HICKS: But they  
5 suggested you get an injunction?

6 MR. CLAWSON: That is right.  
7 They said "Get an injunction".

8 MR. POLLOCK: In those  
9 circumstances, there would not be any objection,  
10 I suppose, as in the case of Norris-LaGuardia  
11 where they say as part of obtaining this  
12 relief, you have to establish that the local  
13 policing authorities refuse or are unable to  
14 provide adequate protection.

15 MR. STEWART: I would object  
16 very much to that because this places the  
17 company, then, in a legal issue with the  
18 public authorities and it may well be that  
19 the company might show the court that it has  
20 made an attempt to have the normal law  
21 enforcement agencies exercise their power  
22 but to go in and to prove that they are unable  
23 and unwilling to do so, would completely  
24 take away the remedy. First of all, it would  
25 make a very unfortunate forum to litigate the  
26 matter, the police versus the employer in  
27 this case. That is the first reason.

28 The second reason, in the  
29 United States where they have this provision,  
30 Norris-LaGuardia, they have found that it is





1 absolutely impossible ---

2 THE COMMISSIONER: Why?

3 MR. STEWART: Because the  
4 courts are loath to find that the police  
5 have been unwilling to discharge their duties.

6 THE COMMISSIONER: But you  
7 have made a request. You can show that.

8 MR. STEWART: It may be our  
9 courts would interpret the language more  
10 liberally towards the plaintiff than they  
11 have in the United States, but we are faced  
12 with the situation, sir, that in the United  
13 States, with this type of language, it in  
14 effect has stopped the injunctions from  
15 being issued. There are reasons cited in  
16 our submission. I cited an article appearing  
17 in 1966 University of Pennsylvania Law Review.

18 THE COMMISSIONER: Yes, I have  
19 it right here.

20 MR. STEWART: We didn't  
21 reproduce the reasons, but in that article -  
22 it is an excellent article by a practitioner.

23 THE COMMISSIONER: Was that  
24 1966 or 1964?

25 MR. STEWART: There are two;  
26 the one I am referring to now is a 1966  
27 Pennsylvania Law Review and in that article  
28 the author sets out several reasons why the  
29 Norris-LaGuardia has been a complete blockade  
30 to obtain an injunction for, they think the wrong





1 reasons and one of those is this provision that  
2 he sets out, based on his experience, why it  
3 has been impossible to prove that the police  
4 are unable to enforce the law.

5 MR. POLLOCK: Without getting  
6 into the question of proof, there would not  
7 be very much difficulty in the situation I  
8 was just explaining this morning, that if you  
9 request the police to come to your assistance  
10 and they refuse to come to your assistance,  
11 there is not much quarrel with that.

12 MR. STEWART: It is not that  
13 easy. The police don't say "We won't" and  
14 turn their backs.

15 MR. HICKS: This is the  
16 problem.

17 MR. STEWART: First of all,  
18 I can't recall exactly the facts in the Welland  
19 situation, but as I recall, the police were  
20 there one day and said "Well, we don't have  
21 enough men, we will be back another day with  
22 more men. We just can't get them out of the  
23 air". I think that is what happened there.

24 Now you couldn't go to a court  
25 and say "They are unable or unwilling". In  
26 fact, they have shown that they will make  
27 another try and the next day, of course, you  
28 attend and there aren't enough police this  
29 time to do it again. In other words, how  
30 long must you wait? In the Oshawa situation,



1 there was a strike at the Ontario Malleable  
2 last summer that you both may be aware of.  
3 In this case, also, the company was not  
4 attempting to operate in any way except one  
5 of its customers was anxious to get out dies  
6 again, in order to give it to another manufacturer  
7 and there the Oshawa police tried extremely hard,  
8 they really did, to get a truck in to get  
9 out the material. They just simply were  
10 not able to. Now, in that case, I think we  
11 could have shown that they had tried and they  
12 just weren't able to. But the courts say  
13 it is never beyond the police to control  
14 the situation, it is just the question of  
15 manpower.

16 THE COMMISSIONER: That is  
17 something the American statute expressly  
18 contemplates - the inability to have access  
19 by the police. When it is admitted by the  
20 Congress, surely a court could take notice  
21 of it.

22 MR. HICKS: It is an awful  
23 indictment of the other enforcement agencies.

24 THE COMMISSIONER: It is  
25 not so much the language of the statute as  
26 the manner in which it is dealt with in the  
27 courts.

28 MR. STEWART: I am glad you  
29 said that, sir, rather than I.

30 MR. POLLOCK: You were thinking





1 it though.

2 MR. STEWART: I agree.

3 THE COMMISSIONER: There is no  
4 doubt at all, it depends upon interpretation  
5 and to accept an arbitrary assumption that  
6 you can't charge the police with failure to  
7 protect a right of that sort - well, I don't  
8 see much justification for it.

9 MR. STEWART: With respect,  
10 sir, this article does deal very well with  
11 why it has been difficult and I am not sure  
12 that the article brings this out, but the  
13 other enforcement aspect of it is that it  
14 does bring the employer into conflict with  
15 the public authorities and in the jurisdiction  
16 in which he is living.

17 THE COMMISSIONER: That is  
18 true.

19 MR. STEWART: That is not a  
20 happy type of thing.

21 THE COMMISSIONER: I agree  
22 with that and especially in a small community,  
23 the policemen and the workers are one, they  
24 are all intimate neighbours. There is no  
25 doubt there is difficulty, I agree. All I  
26 am suggesting is that all of these things  
27 stem from the picket line, really.

28 MR. STEWART: And the larger  
29 the picket line or the mob, the greater the  
30 action will be.



1 THE COMMISSIONER: That is  
2 the conception one has. One is surrounded  
3 by a corridor.

4 MR. STEWART: It is a little  
5 more manipulative than a mob is, but it  
6 is really not a picket line, it is a  
7 bunch of fellows going into concert and  
8 holding hands together and not letting  
9 anyone in.

10 THE COMMISSIONER: If they  
11 had not any business there at all, it would be  
12 easy to deal with.

13 MR. STEWART: If they had no  
14 business being there?

15 THE COMMISSIONER: If they  
16 had no business being there at all, then the  
17 difficulty of the police would be removed.  
18 It is because they are there with a certain  
19 qualified right that causes most of the  
20 difficulty.

21 MR. HICKS: There is a certain  
22 mystique about this picket line situation and  
23 this is the thing that really bothers us. Our  
24 concern is that when there is, in fact, a  
25 physical line, representative bodies from the  
26 trade union, individuals, whether or not it  
27 is there, if the message goes out and we know  
28 how these messages can be gotten out,  
29 directly or indirectly, surreptitiously,  
30 subtly, formally and informally, our concern is





1 that the mystique of the force, the attitude  
2 associated with a strike, will still mean that  
3 there is a restraint.

4 THE COMMISSIONER: That is  
5 sound reasoning because it is supported  
6 today by a limited privilege. If you abolish  
7 that limited privilege, there will be nothing  
8 to support it and that is what is causing  
9 most of your trouble.

10 MR. HICKS: Mr. Clawson has  
11 another example he wishes to mention.

12 MR. POLLOCK: Before we get  
13 to Mr. Clawson, I would ask you how does an  
14 injunction help you in those circumstances if  
15 you are dealing with some mystique, some  
16 philosophy, some intangible?

17 MR. HICKS: In terms of what  
18 we have been discussing?

19 MR. POLLOCK: In terms of  
20 getting people in to take the die out.

21 MR. HICKS: Well, normally,  
22 even there you encounter some difficulty.

23 MR. POLLOCK: You can't get  
24 an injunction and call up the Teamsters to  
25 go in and pick up a die?

26 MR. HICKS: No, we cannot.

27 THE COMMISSIONER: You get  
28 an injunction to restrain any interference.

29 MR. HICKS: That is right.

30 MR. POLLOCK: Well, if you don't



1 have any picket line there initially, then  
2 you don't need an injunction to get rid of  
3 the picket line but if you have got this  
4 mysterious thing and people say, "Well, there  
5 is a plant strike there, don't go in and  
6 don't do these things" well, then you can't  
7 enjoin that.

8 MR. HICKS: Let us take, say,  
9 a community of 5000 or 6000 or 7000 population,  
10 the Town of Wallaceburg, or Ingersoll, or  
11 Simcoe, a town of that size. There is  
12 one dominant industry in the town and there  
13 may be three or four or half a dozen others.  
14 The predominant industry is struck. Now, there  
15 is no picket line but the message is out, "Don't  
16 have anything to do with that employer,  
17 nothing at all". Now, what enforcement agency  
18 is available to the employer? You can't get  
19 an injunction against this mystique I am  
20 talking about.

21 THE COMMISSIONER: They respect  
22 the injunction, don't they?

23 MR. HICKS: But who do you  
24 enjoin?

25 THE COMMISSIONER: Once you  
26 get an injunction they respect it.

27 MR. HICKS: But where there  
28 is not a picket line by law, let us say the  
29 physical picket line is eliminated by law (1)  
30 there is still restraint exercised in one fashion





1 of another, as simply as it may be.

2 THE COMMISSIONER: Well, you  
3 have never tested it.

4 MR. HICKS: It has been  
5 tested by an injunction. What practical  
6 remedy is there available? We can't reach  
7 the problem.

8 MR. POLLOCK: What right do  
9 you have to a remedy?

10 MR. HICKS: The fact is that  
11 they have said "We will have nothing to do  
12 with that plant".

13 MR. POLLOCK: What is wrong  
14 with that?

15 MR. HICKS: We are back to,  
16 I suggest, the union has the right to, in effect,  
17 indefinitely arbitrarily close down an  
18 operation.

19 MR. POLLOCK: If people listen  
20 to them and support their view that this  
21 plant ought not to be dealt with, I think  
22 they have achieved, probably, an ideal of  
23 trade union solidarity.

24 MR. HICKS: But there is  
25 behind this ideal, a measure of intimidation  
26 in my proposition. Whatever form it may  
27 take, there is still a measure of intimidation  
28 in that if you do this and so you are going  
29 to get into trouble. Here is something  
30 we can't possibly reach. This is not just a



1 reasoned attitude again, or reasoned conclusion.  
2 There is the involvement of a motion by us and  
3 on the part of the recipient concerned as to  
4 his welfare and the welfare of his family.  
5 As I say, where there is this intimidation  
6 factor, how do we remedy it?

7 THE COMMISSIONER: You could  
8 get an injunction much more easily with a  
9 denial, not only of any kind of loitering  
10 around the plant, much more easily, you would  
11 not have to prove anything except their  
12 presence.

13 MR. HICKS: That is right, sir,  
14 but once they are dispersed, then we can't  
15 reach them. Once they are dispersed, there  
16 is no one we can pin the injunction on.

17 THE COMMISSIONER: Well, if  
18 there is no one there you don't need an  
19 injunction.

20 MR. POLLOCK: They say they  
21 do need an injunction.

22 MR. HICKS: We couldn't even  
23 identify them, sir. This is our problem.  
24 We couldn't identify the culprits, if you will.

25 THE COMMISSIONER: They  
26 respect an injunction. After an injunction  
27 this thing more or less disappears, doesn't it?

28 MR. HICKS: No, sir. In  
29 Dominion Glass Company of Hamilton, they tore  
30 the order up in front of the sheriff.





1 THE COMMISSIONER: They may  
2 have done that but, after all, do you think  
3 the injunction is an effective instrument?

4 MR. HICKS: Normally. But again  
5 our problem is of what effectiveness is it  
6 when you don't know whom you are enjoining  
7 because they are dispersed, they are unknown, they  
8 are unidentifiable.

9 THE COMMISSIONER: If they  
10 are dispersed, where is the interference with  
11 the plant?

12 MR. HICKS: Through the subtle  
13 grapevine and the subtle pressures.

14 THE COMMISSIONER: Those  
15 subtle mystiques or influences can't close  
16 the gates.

17 MR. HICKS: Well, sir, they  
18 have.

19 THE COMMISSIONER: By force  
20 of themselves, but when you say they don't  
21 close the gates you mean physical presence  
22 is there so there is no mystique about a  
23 physical presence.

24 MR. HICKS: No, sir, but I  
25 think it can be translated very simply to  
26 this dispersal I talk about and dispersion  
27 of the same kind of restraint, the same kind  
28 of restraint where there be real concern  
29 on the part of anyone considering employment  
30 or having any dealings by way of trucking or



1        what-have-you, with that employer.

2                    MR. CLAWSON:    It just occurred  
3        to me, while this discussion was going on,  
4        that if there were such a provision that under  
5        certain circumstances no picketing would be  
6        allowed, it seems to me you would probably  
7        still have to have the injunction to enforce  
8        that.

9                    MR. POLLOCK:    I am sure it would  
10       be pretty easy for a policeman to arrest  
11       someone who was picketing when there was  
12       supposed to be no picketing.

13                   MR. CLAWSON:    What if he  
14       was a block away, or across the street or what  
15       if they posted a sign or billboard in front  
16       of the gate?    Is that picketing?

17                   Anyway, the thing I wanted to  
18       mention, sir, is we have another case which  
19       might shed some light on this.    Last summer,  
20       as you well know, we had a five-day wildcat  
21       strike.    There was not the slightest suspicion  
22       that the union as such had anything to do with  
23       it.    As a matter of fact, they did everything  
24       humanly possible to stop it and to bring it  
25       to an early close.    Nevertheless, there was  
26       a real mob scene there.    There were anywhere  
27       from 1000 to 2000 people milling around the  
28       plant and this was a very serious matter.  
29       First of all, even the chief executives of  
30       the company could not get into the plant, which





1 was serious in itself, none of the salaried  
2 employees. But what was even more serious  
3 our coke ovens and our blast furnaces were  
4 left unattended. If they had been left  
5 unattended beyond a certain period of time,  
6 a very short period of time, they would have  
7 been damaged, especially the coke ovens,  
8 beyond repair. It would have been a \$40  
9 million or \$50 million loss and, of course,  
10 the employees would not have got back to  
11 work for another 3 or 4 months. We had to  
12 get supervisors into the plant to bring  
13 about an orderly cooling-off of the furnaces.  
14 We had to bring them in by boat and by  
15 helicopter.

16 Now, what I am saying here is  
17 that here is a clear case - we weren't attempting  
18 to operate - for an injunction. The police  
19 were totally incapable, not because they  
20 didn't want to, they were just incapable of  
21 doing anything. Now, we did not apply for  
22 an injunction because the third day after  
23 some pressure from us upon the police and  
24 the police commissioner, the Chief of Police  
25 and the Mayor, they did eventually open  
26 up the line and with the assistance, I must  
27 say, of the union officials, the officials  
28 of the organization. But my point is there,  
29 that there the police eventually did act. If  
30 they had not acted, it was probably the only



*Nethercut & Young**Toronto, Ontario*

1 way - even an injunction might not have been  
2 successful here, but it might have been the  
3 only remedy.

4 THE COMMISSIONER: You accept  
5 that as a remedy but what greater force has  
6 an injunction than the law?

7 MR. CLAWSON: It is a little  
8 easier for the police to enforce an injunction.

9 THE COMMISSIONER: But why?  
10 I can't understand why they could enforce  
11 an injunction rather than enforce the law,  
12 which is clear.

13 MR. CLAWSON: Well, (a) there  
14 may be an honest difference of opinion amongst  
15 the police as to just what picketing laws  
16 are, especially in some of the smaller locations.  
17 They seem to think the people have - this  
18 folk lore has grown up that pickets may  
19 bar access to the plant.

20 THE COMMISSIONER: Exactly.

21 MR. CLAWSON: But an  
22 injunction is an extraordinary remedy.

23 THE COMMISSIONER: So is  
24 the law.

25 MR. CLAWSON: We have a law  
26 now against picketing in the criminal code.

27 THE COMMISSIONER: It is  
28 the vagueness of that that causes the uncertainty  
29 of the police.

30 MR. CLAWSON: If you could





1 define it, sir, it might be such an infringement  
2 on individual liberty, even passers-by, that  
3 I don't know what results you would get into.

4 THE COMMISSIONER: I must say  
5 our so-called liberties are restrained by  
6 every law in existence.

7 MR. STEWART: Sir, it is  
8 not the vagueness of existing laws, because  
9 we all know it is wrong. My six year old  
10 daughter knows that it is wrong to hit  
11 someone. She may not know it is against the  
12 law, but she knows it is wrong.

13 MR. POLLOCK: I wish you  
14 could tell my son that.

15 MR. STEWART: We are not  
16 dealing here with vague and uncomprehendable  
17 laws.

18 THE COMMISSIONER: We have  
19 listened here to a number of good citizens  
20 give their ideas of what they thought they  
21 were entitled to do on a strike line. They  
22 are in the same class as the policeman and  
23 their ideas, in some cases, were ridiculous.  
24 They thought that they could actually close  
25 the plant physically. Now, if they do that,  
26 what are the policemen to do? I don't know.  
27 They claimed this right. "I don't know, what  
28 their rights are, I am not a student of the  
29 criminal law, I don't know just what that  
30 qualification in one of the sections is".



1 MR. STEWART: I agree with  
2 everything you have said, sir, but I suggest -  
3 and I hope this is what our brief tries to  
4 say - that the changes necessary here are not  
5 changes in the substantive law but in the  
6 administration of it through better education  
7 of the police forces and this lies initially  
8 with the Attorney General's Department, with  
9 the Ontario Police Commission down the hall  
10 here, with the Crown Attorneys in each county  
11 town. Therein lies the answer. There is  
12 no need for a change in substantive laws, it  
13 is just to have them enforced now.

14 THE COMMISSIONER: That is  
15 a legitimate opinion but I must say, at the  
16 moment, I don't think you are showing  
17 considerations that justify that. All you say  
18 is "Send the individuals, send the police,  
19 everybody concerned, to school to learn what  
20 their rights are. Then appeal to their  
21 reason to obey them", and to restrict them as  
22 the law restricts them. That has been going  
23 on for some generations now and you really  
24 haven't advanced very far.

25 MR. STEWART: Excuse me,  
26 Mr. Commissioner, I don't accept that. I  
27 think in areas where the police have enforced  
28 the law, it is demonstrable that, in fact, there  
29 is no difficulty, that where the police have  
30 set about to enforce the law, that is it, there



1 is no need to get an injunction. In our brief  
2 we set out the examples in Chicago and New  
3 York which, I would think, as urban centres  
4 would have as much law enforcement difficulties  
5 as any place on the North American continent.  
6 They have found no difficulty in strike situations.  
7 I think the situation in Metropolitan Toronto  
8 has been similar because here the police are  
9 ready to endorce the law.

10 THE COMMISSIONER: You are not  
11 opposed, really, to the elimination of the  
12 picket line. It doesn't make any difference  
13 to you. What you are opposed to is the  
14 counter balancing limitation in another sense?

15 MR. STEWART: Quid pro quo, yes.

16 THE COMMISSIONER: That is  
17 what you are objecting to, not the elimination  
18 of the picket line.

19 MR. STEWART: Yes.

20 MR. POLLOCK: In the situation  
21 that you opened with, Mr. Hicks, the problem  
22 of other units not crossing the picket line,  
23 did you ever negotiate contracts - I know that  
24 some exist, but is there a policy behind this  
25 in which contracts are negotiated including  
26 a term that gives permission or gives the  
27 option to the employee bound by the collective  
28 agreement that he can, if he chooses, respect  
29 the picket line?

30 MR. HICKS: Yes. It is just





1 a matter of competency. There are certain  
2 unions - take the Teamsters who I believe have  
3 it in some of their contracts, although it  
4 doesn't appear in all of them.

5 MR. POLLOCK: There are very,  
6 very few agreements that have that provision.

7 MR. HICKS: I would guarantee  
8 that less than 1 per cent have it.

9 MR. POLLOCK: The employer  
10 would not have much of a leg to stand on with  
11 this in the agreement.

12 MR. HICKS: That is certainly  
13 right.

14 MR. POLLOCK: It is implied then  
15 that once you sign the agreement people are  
16 crooks if there is not that provision in it.

17 MR. HICKS: That would be our  
18 position.

19 MR. POLLOCK: The steelworkers  
20 included that in their agreement and they felt  
21 obligated to cross the picket lines.

22 MR. HICKS: That is right.

23 MR. POLLOCK: That was the  
24 case with the railwaymen at Algoma.

25 MR. HICKS: Well, it was the  
26 bricklayers. The question arises, however,  
27 Mr. Pollock, whether the public interest  
28 should not, in a case like that, have taken  
29 precedence over the private provisions of an  
30 agreement when it came to crossing a picket



1 line which had in fact been contemplated by  
2 the Taft-Hartley Act.

3 MR. POLLOCK: What was the  
4 public interest in that?

5 MR. CLAWSON: Access to a  
6 plant.

7 MR. HICKS: Take a case where  
8 the whole community is on strike. Most of the  
9 workers in that community are dependent upon  
10 that for their livelihood.

11 MR. POLLOCK: You ought not to  
12 negotiate that into a contract, I guess.

13 MR. HICKS: Quite absolutely.  
14 I think it is contrary to the spirit and intent  
15 of legislation and the public interest.

16 MR. CLAWSON: And very often  
17 it is not negotiated into the contract. It is  
18 considered a contract is a result of coercion.  
19 All contracts are not negotiated freely and  
20 voluntarily. Sometimes there is just no  
21 choice.

22 MR. HICKS: I think it flies  
23 in the face of the whole purpose of the  
24 statute which was designed to give stability.  
25 It is totally inconsistent with the original  
26 intent of the statute.

27 MR. POLLOCK: It depends on  
28 through whose eyes you happen to look at the  
29 public interest, I suppose.

30 THE COMMISSIONER: It may not





1 go against the public interest at all. The question  
2 is the  
3 in fact/ remedy. You evidently have a great  
4 respect for the injunction.

5 MR. POLLOCK: Unless you have  
6 any remarks that you want to make on the  
7 concluding part of part 5, that is the police  
8 enforcement, that you have not made already,  
9 we will move on.

10 MR. HICKS: No, before we  
11 leave part 5, if I may - were you finished  
12 with part 5?

13 MR. POLLOCK: Yes.

14 MR. HICKS: As you know, we  
15 have made a strong submission as to having  
16 specific legislation outlining secondary  
17 boycotts and I thought it would be of  
18 interest to the Commission, perhaps you saw  
19 it in this morning's paper, Mr. Clawson  
20 happened to catch it, I didn't in my quick  
21 review of the paper this morning. This is a  
22 report dealing with a decision of the U.S.  
23 Supreme Court upholding a secondary boycott  
24 in respect of prefabricated goods, and  
25 that is despite what was presumed to be a  
26 specific prohibition under their legislation  
27 concerning secondary boycotts.

28 MR. POLLOCK: Is there an  
29 exception with relation to the preservation of  
30 jobs? I think there is something mysterious  
there. I don't understand their legislation.



1 MR. HICKS: This is right.

2 We are using this to illustrate the point  
3 we also seek to make in our submission. There  
4 must be a very precise, unequivocal statement  
5 of the law to avoid this kind of thing  
6 happening and it is for that purpose that -  
7 again Mr. Clawson has another case along that line.

8 THE COMMISSIONER: What do  
9 you consider this to mean?

10 MR. HICKS: Apparently in that  
11 case, sir, they have found that they can  
12 boycott prefabricated goods.

13 THE COMMISSIONER: They won't  
14 work?

15 MR. HICKS: They won't work  
16 with it. As a matter of fact, it is occurring  
17 now in this country that if prefabricated goods  
18 come in they refuse to handle it unless (a)  
19 they break it down and, (b) reassemble it.  
20 They just place an embargo on it, that is  
21 all, even though it is broken down.

22 MR. POLLOCK: A lot of that  
23 depends on the contract on which they are  
24 operating on the job site. In some cases  
25 the employer will negotiate a contract with, I  
26 think you point out, pipefitters in this case.  
27 I don't know the facts of that case but they  
28 will negotiate a contract  
29 with a union on a site saying "You  
30 have jurisdiction over all this type of work



1 running from a 2 inch pipe to a 10 inch pipe".  
2 And then, in the face of that contract, a  
3 contractor goes out and gets somebody else  
4 to put something together that involves this  
5 type of pipe and makes an agreement with him  
6 to come in and install it on the job in the  
7 face of a contract with these pipefitter,  
8 these other people, saying that they have  
9 the jurisdiction to do that.

10 MR. HICKS: I don't know  
11 whether the contracts are that specific  
12 or that precise. The ones I have seen  
13 are not.

14 MR. POLLOCK: The problem  
15 is they are not specific and precise, they  
16 are very general. I think if you negotiate  
17 a general contract, you take the consequences,  
18 unfortunately.

19 MR. CLAWSON: I could shed  
20 some light on this, sir. That is one of  
21 the reasons we think we should have  
22 a specific prohibition of secondary boycott  
23 even though a small contractor or sub-contractor  
24 renegotiates something differently with  
25 his union, because you gentlemen have heard  
26 a lot of briefs from the contractors' associations  
27 and you know the sort of things that go on  
28 so far as boycotts are concerned and  
29 jurisdictional problems. We, as manufacturers,  
30 have a very important stake in this also, although





*Nethercut & Young**Toronto, Ontario*

1 we don't negotiate the agreements with the  
2 construction union, because a lot of these  
3 jobs are very crucial, most of the major jobs  
4 are done in connection with industrial expansion  
5 and when problems like this arise, a delay  
6 in the completion of a production project  
7 can be very serious, not only for the employees  
8 and the customers but for the economy at  
9 large and these are the sort of things that  
10 happen.

11 THE COMMISSIONER: Aren't they  
12 learning to exercise greater foresight of  
13 the possibilities they may resort to, say,  
14 in sub-contracts?

15 MR. CLAWSON: You see, many  
16 of the small contractors, their agreements  
17 are almost dictated to them by the national as-  
18 sociations, the large contractors and they  
19 are automatically covered by them.

20 THE COMMISSIONER: The  
21 general contractor certainly has a standing  
22 and has an experience that surely would enable  
23 him to make provisions for matters of that  
24 sort.

25 MR. CLAWSON: What we are saying  
26 is that many of the contractors have not got  
27 skilled industrial relations people but can  
28 foresee some of these things and also I come  
29 back to the point I mentioned to Mr. Rollock  
30 earlier, some of these things creep into



1 agreements as a result of, well almost  
2 blackmail. They are not voluntarily  
3 negotiated and then they are in such general  
4 terms that some little situation comes along  
5 that is really debatable whether it is  
6 covered. For instance, I can give you one  
7 case recently where there was a provision in  
8 the agreement between the contractor and the  
9 construction union, that to the extent possible  
10 (I think this is the way it went) pipes  
11 shall be fabricated, you know, bended and  
12 welded, on the site. In this situation, some  
13 very complicated piping assemblies, rather  
14 large ones too, had to be made. The contractor  
15 even went to the construction union and told  
16 them, "Look, we haven't got the equipment  
17 to do this on the site, this is going to have  
18 to be done in a plant".

19 MR. POLLOCK: Montreal?

20 MR. CLAWSON: No, in Ontario.

21 And this was fabricated in a plant, a unionized  
22 plant, not a non-union plant but an industrial  
23 union plant and the contractors union, of course,  
24 was an A.F. of L. craft union. The material  
25 was delivered and the employees and the union  
26 refused to install it. The suggestion was  
27 made that they should be allowed to grind off  
28 the welds and reweld them.

29 Now, this was not a case of  
30 trying to protect their jobs. These fellows





*Nethercut & Young**Toronto, Ontario*

1 in today's labour market, all could get jobs.  
2 They were not being deprived of jobs. It was  
3 not made under scab conditions, it was made  
4 in a good union plant.

5 THE COMMISSIONER: It was a  
6 barrier of competition between workers.

7 MR. CLAWSON: The problem is,  
8 you might say, well, if they refused to work  
9 on this it could be considered a strike. The  
10 added hazard nowadays is they might not  
11 walk off in concert, they could just quit,  
12 they could get jobs and, therefore, we think  
13 it is essential that there should be something  
14 in the law specifically, to outlaw - I am not  
15 saying that even if you had such provision it  
16 would always be successful, but it would at  
17 least give contractors and the owner, who is  
18 really the one who suffers, some remedy.

19 MR. POLLOCK: They could quit  
20 with some justification in the face of that  
21 contract, I suppose.

22 MR. CLAWSON: The contract was  
23 not that specific, Mr. Pollock.

24 MR. POLLOCK: You put a pretty  
25 heavy onus on the unions to negotiate these  
26 terms in the contract and you stressed very  
27 heavily that this is negotiation, you have to  
28 look at the contract and perhaps, in exchange  
29 for that type of jurisdictional clause, they  
30 may have settled for less money or something



1       like that.

2                       MR. CLAWSON:    I believe in  
3       free, collective bargaining but I think there  
4       are some questions that are of public policy.  
5       Even if two parties do contract for something,  
6       there are some things that public policy  
7       should not permit.

8                       THE COMMISSIONER:    I would  
9       support that, but really, what you are saying -  
10      and I mention it simply to show you how you  
11      qualify your position, and legitimately - is  
12      the cry that you don't want the law to touch  
13      you.    It is more observed in the violation  
14      than in the respect for it.    You are asking  
15      the law to step in, even in a detail of that  
16      sort.    Well, it may be legitimate but when  
17      other suggestions are made about the intrusion  
18      of the law, don't dismiss it as if it were  
19      an illegal thing to introduce legal regulation  
20      of any feature of work, that is all I say.

21                      MR. CLAWSON:    I hope we are  
22      not doing that, sir.

23                      THE COMMISSIONER:    All I mean  
24      is that we become the victims of words and  
25      shibboleths.

26                      MR. CLAWSON:    Our whole  
27      attitude throughout this brief is we do not  
28      think it is desirable to interfere, through  
29      legislation, in free collective bargaining  
30      anymore than is absolutely necessary.    There



1 may be some argument as to what is absolutely  
2 necessary. We suggest in our brief secondary  
3 boycotts is one situation; compulsory membership  
4 in a union as a condition of employment is  
5 another area where the rights of citizens  
6 should not be allowed to be abrogated by  
7 private contract.

8 MR. POLLOCK: If you are  
9 going to gore, gore their ox.

10 MR. CLAWSON: I don't understand  
11 the metaphor.

12 MR. POLLOCK: If the law is  
13 going to come in, let us restrict them and  
14 not us.

15 MR. CLAWSON: Restrict who,  
16 Mr. Pollock?

17 MR. POLLOCK: The unions.

18 MR. CLAWSON: How does this  
19 restrict them? The unions, on the whole,  
20 are not demanding compulsory union membership  
21 as a condition of employment. They are quite  
22 satisfied with the formula that the Commissioner  
23 devised a number of years ago, but there are  
24 still a few unions ---

25 MR. POLLOCK: You have not  
26 read all the briefs.

27 MR. CLAWSON: We have had no  
28 problem and most of the men around this table  
29 have had no problem with this compulsory union  
30 membership. The unions are quite satisfied





1 with the so-called Rand Formula.

2 THE COMMISSIONER: Don't think  
3 for a moment that any criticism implies a  
4 lack of understanding of your position because  
5 I think in many cases, it almost amounts to  
6 an absurdity in the nature of the objection  
7 taken. I mean, in such a thing as you say:  
8 Here is a small matter if it doesn't get  
9 out of union ranks. If union is fabricating  
10 in that plant, there is no violation of union  
11 solidarity, that it should be accepted that  
12 way. Those things to me, are pretty minor.  
13 I suppose they spring from the fact that this  
14 group wants as much work as it can get, is  
15 that so? I don't know any other conceivable  
16 reason.

17 MR. CLAWSON: You are getting  
18 into a very difficult area there. There is  
19 still a great deal of antipathy and competition  
20 between the old line craft unions and the  
21 AF of L. In one case Mr. Reuther wants to  
22 put a no countering-out clause in the agreement.  
23 If he does that, Ford or General Motors will  
24 probably be boycotted by the construction  
25 unions because everything has to be done by  
26 the competent industrial union. This is  
27 the sort of dilemma we are faced with these  
28 days.

29 MR. POLLOCK: You suggest that  
30 there ought to be an enlargement of the



1 injunction procedure to permit a trial in  
2 the interlocutory hearing. What type of  
3 enlargement of procedure do you contemplate?

4 MR. STEWART: We expand on  
5 this further on in our brief; we have not  
6 reached it yet.

7 MR. POLLOCK: If injunction  
8 procedures were in open court with viva voce  
9 evidence rather than by affidavit, what  
10 argument can you make against it?

11 THE COMMISSIONER: I don't think  
12 there is any doubt about it if this would  
13 make the injunction processes more acceptable  
14 universally.

15 MR. STEWART: Of course, we  
16 would welcome it because we have nothing to  
17 hide in this proceeding. To my mind it seems  
18 to be simply a problem of how to organize  
19 the courts so that they could be utilized  
20 in that manner.

21 THE COMMISSIONER: I was  
22 wondering on your weekly courts if they ever  
23 hear viva voce evidence.

24 MR. STEWART: Yes, sir. It is  
25 nothing new but I would have to be fair and  
26 say that it is not the rule. The difficulty  
27 in weekly court is -today is Tuesday, normally  
28 weekly court is on Wednesday and there are  
29 usually 25 matters on the list at Osgoode Hall  
30 with usually one judge to handle them. Some





1 of the other matters are very detailed and  
2 difficult. For example, a certiorare application.  
3 There is nothing here that can't be solved with  
4 more judges. It is just that simple.

5 THE COMMISSIONER: I have not  
6 any doubt in my mind that viva voce evidence  
7 would cure the basis of criticism about matters  
8 of injunction procedures.

9 MR. STEWART: Sir, I think it  
10 would give a much better impression. One  
11 of the other side aspects of it is that it  
12 might not be necessary for every injunction to  
13 be litigated in this manner. It appears to  
14 me that perhaps the affidavits or statements  
15 of fact should be still utilized, maybe not  
16 in an affidavit form but a statement of fact,  
17 and it may well be that in 90 percent of  
18 injunction applications there would be no  
19 contest. In my experience, that would be  
20 an unfair statistic. Very seldom are they  
21 contested. I have seen reasons given why  
22 that is so, that there is no point in contesting  
23 it. I don't accept that, there is always  
24 a point in contesting things.

25 MR. POLLOCK: You could solve  
26 the same problem by filing your affidavit and  
27 serving your affidavit and then providing the  
28 affiant, making him subject to cross-examination  
29 at the hearing.

30 MR. STEWART: Certainly.



1 MR. POLLOCK: In those cases  
2 where the union is prepared to admit that  
3 these things occurred, then there would not  
4 be any quarrel and where there aren't, they  
5 can call their evidence if they want.

6 MR. STEWART: I understand  
7 that in most of the federal court systems  
8 in the United States, for example, a procedure  
9 not unlike this is followed where the affidavits  
10 are still used and they are still filed and the  
11 counsel for the union and the employer will  
12 attend judge's chambers and he will determine  
13 on the affidavits and the statements made by  
14 counsel, whether a trial, a summary trial of  
15 the proceedings is necessary and he will set  
16 a date. Usually it is held within two weeks  
17 and if the situation is such, they normally  
18 would give relief in the interim, so you  
19 might say you would have an injunction on  
20 affidavit evidence for a period of a week  
21 or ten days, something like that.

22 MR. POLLOCK: Of course you  
23 are back to the same problem again.

24 MR. STEWART: Not really.

25 THE COMMISSIONER: You see, we  
26 get these conceptions that here, the critical  
27 moment has arrived, we want to be free, we  
28 want to work upon the feelings of our men,  
29 to terrify other people. It couldn't be said  
30 to terrify them, but you see, it has been



1 established that this artificial procedure  
2 has been converted into a sort of ceremonial  
3 rite, that you proceed in the same manner with  
4 the same pattern taking place and it becomes  
5 stiff and artificial and still you want to  
6 preserve that.

7 MR. POLLOCK: On page 41, in  
8 the right hand column, talking about some  
9 of the provisos in the National Labour Relations  
10 Act, the first proviso insulates and permits  
11 a refusal to cross a primary picket line  
12 of another struck employee. The second, the  
13 publicity or handling proviso appears to  
14 permit publicizing of a dispute by means  
15 other than picket. What do you say about  
16 those provisions as far as Canada is concerned?

17 MR. STEWART: Well, as we  
18 say later, I think over the page, under  
19 secondary boycott, the difficulty with the  
20 second provision, particularly, is that it  
21 is asking the courts to interpret - this is  
22 the way it has been interpreted again, Mr.  
23 Commissioner, <sup>in</sup> the United States, and I have  
24 stated what unfortunately, are the court's  
25 interpretations - they have said you cannot  
26 picket but you can inform and one of the methods  
27 of informing is to demonstrate by handing out  
28 leaflets at the struck plant. It is an  
29 awfully difficult thing for a passer-by or a  
30 person wishing to do business, to determine which





1 is a picket or which is a demonstrator informing  
2 people. The picket line is not capable of  
3 such distinctions.

4 THE COMMISSIONER: You don't  
5 consider, I suppose, that the boycott extends  
6 to the agreement between the strikers that  
7 they will do their best to persuade others  
8 not at the plant at all and not at the premises,  
9 but amongst themselves, agree that they won't  
10 patronize this in any way that might be  
11 looked upon as a conspiracy for the modification  
12 by law. You don't extend it to that?

13 MR. HICKS: No, that is really  
14 the strike, isn't it? Or primary boycott?  
15 The individuals immediately involved.

16 THE COMMISSIONER: Oh, no,  
17 suppose they say, "Very well, this man over  
18 there is maintaining an open way for trade  
19 with the struck premises. We agree among  
20 ourselves that we will have nothing to do with  
21 him" and that is all they do, they agree.

22 MR. HICKS: If it is a  
23 voluntary agreement, sir, yes.

24 THE COMMISSIONER: If it is  
25 in the nature of what was formerly called a  
26 conspiracy.

27 MR. HICKS: Yes.

28 THE COMMISSIONER: You do  
29 not extend the word "boycott" to that?

30 MR. POLLOCK: Would you permit



1 them to advertise in the newspaper not to buy  
2 these particular products that are sold at  
3 the following stores?

4 MR. HICKS: Well, you are  
5 back to the principle of your Heather Hill  
6 case, are you not?

7 MR. POLLOCK: No, you are  
8 not picketing, you are back to the basic  
9 desire to communicate information that these  
10 products are sold to these places without  
11 Mr. Stewart's problem of having people there ---

12 MR. HICKS: I don't see any  
13 objection to that.

14 THE COMMISSIONER: I don't  
15 see how you could object to that. They could  
16 say "Here, we are on strike, don't patronize  
17 them".

18 MR. POLLOCK: It is the physical  
19 presence of people there that bothers you?

20 MR. STEWART: The first proviso,  
21 Mr. Pollock, to continue to answer your question,  
22 I think we have discussed. This is the  
23 provision in a collective agreement that Mr.  
24 Clawson was discussing this morning, on which  
25 the statistic was given of 1 per cent, so  
26 obviously, we are against the legislated  
27 inclusion of that.

28 These problems are difficult,  
29 obviously, and where to draw the line is always  
30 hard. In attempting to draw the line, we





1 think they have swept out the relief which  
2 they sought to set out. This is the difficulty.  
3 We urge, if any legislation was passed in  
4 the province, it would, we hope outline  
5 the secondary boycott that we not deceive  
6 ourselves that we are giving protection by  
7 putting provisos on it which, in effect, opens  
8 a door and withholds any protection which  
9 might have been intended to be given.

10 THE COMMISSIONER: There is  
11 no doubt about that, the moment you begin  
12 to qualify, then you are getting into further  
13 difficulties of interpretation.

14 MR. POLLOCK: How do you  
15 segregate the difficulties involved in a  
16 common situs picket, if, for instance, you  
17 have a common situs and one plant is on a  
18 legitimate strike and other people refuse to  
19 cross that picket line and it is a two or  
20 three man picket line, it is not a large  
21 number of people, it is otherwise a peaceful  
22 picket line with a sign which says "John Brown  
23 is on strike"?

24 MR. STEWART: I think that  
25 is one of the things that first of all - let  
26 us take a shopping centre, something we can  
27 talk about tangibly, I think there the pickets  
28 should be conducted at the locale of the  
29 struck retail premises. The difficulty with  
30 that is that then they go on to what might



1 be considered private property, but I think  
2 that if they are so limited and they could  
3 not go on that property, then they might have  
4 a right to withdraw to the second line of  
5 trenches on the periphery and picket the  
6 shopping centre. Assuming for a moment we  
7 are allowing picketing of this type of place ---

8 MR. POLLOCK: If you have got a  
9 legitimate trade dispute then it follows that  
10 you can picket.

11 MR. STEWART: One thing I  
12 would ask is that the picket signs themselves  
13 identify quite clearly the person being  
14 picketed and the dispute at the premises.

15 MR. POLLOCK: That is picketing  
16 with relation to the consumer, the public,  
17 a shopping centre. Let us take picketing  
18 in relation to a construction site which is  
19 probably more difficult because trade unions  
20 refuse to cross in some cases, at least that  
21 is what the rules seem to say, picket lines.  
22 Say I have a dispute - I am a plasterer and  
23 I have a dispute with my employees and they  
24 go and picket the premises and it is legitimate  
25 and lawful. The sub-contractor carpenter  
26 has no dispute with his employees but his  
27 employees won't cross my picket line. He  
28 probably has a remedy against his employees.  
29 In these days of short supply of tradesmen,  
30 it may be a hollow one.



1 MR. STEWART: Construction  
2 is a very special problem because industrial  
3 unionism has not rationalized the process  
4 there, we have 16 trades and it seems wrong  
5 that each one of them has the right to strike  
6 and they close the place. I don't know the  
7 answer to it but it seems obvious that one  
8 of the answers should be - for example, at  
9 Wellesley Hospital, in that situation where  
10 there was a strike of the operating engineers,  
11 they permitted the picketing only at the  
12 hospital site, as such, not at the construction  
13 site. So there was an attempt to balance  
14 interests here which I submit was illegitimate.

15 MR. POLLOCK: What about  
16 those circumstances now, carrying it into  
17 ordinary industries where you have multi-unit  
18 problems and you have people who are members  
19 of the clerical staff refusing to cross a  
20 picket line of your production staff and it  
21 is a small line, it is 2 or 3 people again  
22 and they feel committed to the trade union  
23 ethic?

24 MR. STEWART: Of course, if  
25 they have collective agreements they should  
26 honour them.

27 MR. POLLOCK: If they don't  
28 honour them then you have an action against  
29 them, haven't you?

30 MR. STEWART: Yes.





1 MR. POLLOCK: But you ought  
2 not to turn around and say to the court, "Look  
3 at these pickets, they are picketing out there  
4 and they are inducing a breach of the contract  
5 by these other people".

6 MR. HICKS: No.

7 MR. POLLOCK: You agree with  
8 that?

9 MR. HICKS: Yes.

10 THE COMMISSIONER: It is the  
11 history of law that the value of a skilled  
12 technician is his fascination with competition.

13 MR. POLLOCK: Is there  
14 anything else you would like to say about  
15 the United States or American experience?

16 MR. HICKS: I don't think so,  
17 thank you, Mr. Pollock.

18 MR. POLLOCK: I judge by  
19 the brevity of the submission in relation  
20 to the United Kingdom, that we can turn that  
21 page over?

22 MR. HICKS: Yes.

23 MR. POLLOCK: I take it from  
24 part 8 which seems to compare and contrast  
25 the administrative procedure in the court  
26 procedure, that the gist of that is that the  
27 present function of the Labour Relations Board  
28 as an administrative agency, ought not to be  
29 expanded and, in fact, it ought to be, in  
30 some measure, curtailed.



1 MR. HICKS: Yes.

2 MR. POLLOCK: And then the  
3 balance of the material that you have taken  
4 from the Labour Relations Board be vested  
5 in the courts?

6 MR. HICKS: Yes.

7 MR. POLLOCK: I wonder if  
8 you could develop that thesis a little bit  
9 better than you have in your brief?

10 MR. POLLOCK: The difficulty  
11 here would be in finding enough judges.

12 MR. STEWART: Well, I would  
13 say ---

14 MR. POLLOCK: I was just  
15 wondering what brought it on.

16 MR. STEWART: We have all  
17 brought it on. One of the areas -- it is  
18 strange that in this twentieth century  
19 there has been very little research into when  
20 the function of the court stops and starts and  
21 when the function of the government stops and  
22 starts. Historically, there has been a lot  
23 of writing upon the availability of laws  
24 and separation of powers and this sort of thing.  
25 Since administrative boards have come into  
26 operation they have been granted more and more  
27 powers by the legislature and I would submit  
28 in the vast majority of cases quite properly  
29 so in order to effect certain public policies  
30 for some legislative purpose that the legislature



1 was incapable, because of the intricacy of  
2 the matter or the time involved, of doing themselves.  
3 But I don't think we should lose sight of  
4 the fact that these administrative boards  
5 are, in fact, merely receivers of power from  
6 the legislature.

7 THE COMMISSIONER: Well, who  
8 has suggested anything else?

9 MR. STEWART: Well, for  
10 example, in the American case they have, in  
11 effect, taken over what we would consider the  
12 functions of courts.

13 THE COMMISSIONER: But there  
14 is a clear distinction even in the American  
15 Constitution between judicial and non-judicial  
16 surely. Certainly there is in Australia.

17 MR. STEWART: It is true,  
18 though, that in the United States they have  
19 welded the two together. The National  
20 Labour Relations Board has the power to find that  
21 someone has been committing an unfair  
22 labour practice.

23 THE COMMISSIONER: Well, we  
24 have that in this country.

25 MR. STEWART: In our Labour  
26 Board, you mean?

27 THE COMMISSIONER: Yes, the  
28 John East Iron Company case.

29 MR. STEWART: That is like  
30 section 65 of our Ontario Act.





1 THE COMMISSIONER: Labour law  
2 fits properly under our present interpretation,  
3 certainly local labour, under provincial  
4 jurisdiction. Well, you can enact penalties  
5 to enforce the observance of that purely  
6 local law.

7 MR. STEWART: I quite agree.  
8 But who is to determine whether there has been  
9 a breach - is it to be a court or an administrative  
10 agency?

11 THE COMMISSIONER: I would say  
12 it would be the Labour Board. Why shouldn't  
13 they do it? It is all legislation that had  
14 no part in the general courts in 1967.

15 MR. STEWART: Who is  
16 to perform this task. That the court is the  
17 agency which says when a person is doing right  
18 or wrong.

19 THE COMMISSIONER: In certain  
20 fields of law.

21 MR. STEWART: In the case of  
22 the Labour Relations Board, we have given  
23 it a variety of functions and in order to  
24 carry out those functions, we have in our  
25 brief, referred to the certification function,  
26 you have given it the power to, in effect,  
27 announce policy, which is fine, we don't quarrel  
28 with that.

29 MR. POLLOCK: I don't know  
30 what you mean "announce policy".



1 MR. STEWART: Whether you are  
2 going to allow craft unions and to what  
3 extent they will be carved out of an  
4 industrial unit.

5 MR. POLLOCK: There you are  
6 giving them some discretion, is that what  
7 you mean?

8 MR. STEWART: That is policy,  
9 I don't quarrel with it. Somebody has to  
10 make this decision, but it is policy, let us  
11 not deceive ourselves.

12 THE COMMISSIONER: I suppose  
13 you could say all legislation is policy.

14 MR. STEWART: Exactly, and  
15 they have received the power to do that from  
16 the legislature. In order to do that properly  
17 they have been given what we call administrative  
18 paraphernalia, officers, examiners, et cetera.  
19 Also on the board have been placed the so-called  
20 partisan interest in the labour dispute,  
21 management and organized labour. Now, we  
22 think that the presence on the board of  
23 these persons, the nature of the policy-making  
24 function of the board takes away, understandably  
25 and quite naturally from its judicial appearance  
26 from its judicial function.

27 THE COMMISSIONER: I don't  
28 quite understand what you mean by taking away  
29 its judicial function because if it is not  
30 subject to section 96 in relation to the



1 appointment of a judge, the province creates  
2 its own court, it creates inferior courts and  
3 within its jurisdiction it can call a court  
4 anything it pleases.

5 MR. STEWART: If the province  
6 did create another court which was divorced  
7 from ---

8 THE COMMISSIONER: They can  
9 call it a labour board.

10 MR. STEWART: I quite agree,  
11 sir, and if they called it a labour board or  
12 whatever they called it, if it did not give it  
13 policy-making functions and it didn't give it  
14 administrative functions and put on the board  
15 the partisan interest and necessary compromise  
16 which the presence of these interests on the  
17 board means then I would have no quarrel with it.

18 THE COMMISSIONER: Well, you  
19 are suggesting criticisms of the policy that  
20 the legislature has so far followed.

21 MR. HICKS: Not really, sir.

22 THE COMMISSIONER: I don't quite  
23 understand what you mean.

24 MR. STEWART: We are simply  
25 saying that the legislature, properly so, has  
26 given this board certain jobs to do. The  
27 nature of those jobs demands that - demand  
28 perhaps is too strong a word - necessarily  
29 means that it will involve itself in administrative  
30 tasks which are non-judicial in character.





1 MR. POLLOCK: You are suggesting  
2 the segregation of a judicial function from  
3 the administrative function?

4 MR. STEWART: Yes, very  
5 definitely.

6 MR. HICKS: We are saying the  
7 judicial function cannot be applied because  
8 of the atmosphere or area of compromise that  
9 prevails with a partisan board. You can't  
10 have a judicial decision in the normal sense  
11 if it represents a compromise with regard to  
12 partisan interests. You then don't get a  
13 judicial decision. It is a compromise position.

14 THE COMMISSIONER: Well, that  
15 is a question for the court of appeal to  
16 decide whether, in any particular case, you  
17 have a violation of something objectionable  
18 in the jurisdiction of the province over labour  
19 matters.

20 MR. HICKS: What in effect,  
21 we are saying, we are not asking for any  
22 substantial change here at all but just want  
23 to be on record, we are saying that their  
24 present administrative functions remain with  
25 the board. We are saying there should not  
26 be any new judicial functions added to the  
27 board.

28 THE COMMISSIONER: Give me an  
29 example of what you mean?

30 MR. HICKS: Some of the unions,



1 I think, have proposed to you, sir, the right  
2 to issue cease and desist orders in respect  
3 of strikes and picket lines.

4 THE COMMISSIONER: That is  
5 already in the Act.

6 MR. HICKS: No, sir, it is not.

7 THE COMMISSIONER: They can,  
8 in some circumstances, issue a cease and  
9 desist order.

10 MR. POLLOCK: On jurisdictional  
11 construction they can.

12 MR. HICKS: I am sorry, that  
13 is in the Act and we think a judicial  
14 determination should have no compromise element  
15 in it at all, it is a question of fact, not  
16 of compromise. It is a clear question of  
17 fact: Is there a clear violation or is there  
18 not? If there is a clear-cut legislative  
19 standard established by the Act such as in  
20 that case, then we say that the courts are the  
21 ones that are best equipped traditionally,  
22 experienced in these matters, and they are  
23 the best to deal with it. Now, we are not  
24 materially departing from the present concept  
25 of the Ontario Labour Relations Act. We are  
26 suggesting, really, only one minor change and  
27 that concerns the matter of prosecutions.  
28 We are saying two things, that there should  
29 be no discretion in the Board regarding the  
30 issuance of declaratory orders where there is



1 an unlawful strike or lock-out. That is left  
2 with the Board, that there should be no  
3 discretion in the Board for the reasons we  
4 discussed yesterday. We are saying, secondly,  
5 though, that when it comes to a prosecution  
6 there should be no intervening tribunal with  
7 the power of veto of the right to get to the  
8 court and have your case heard and disposed  
9 of properly. There should be no discretion  
10 there now, as there now prevails in the Board.  
11 This is a judicial function and, therefore,  
12 should not be involved in the administrative  
13 functions of, as we put it, a partisan tribunal  
14 where compromise is normally the rule of the  
15 day.

16 MR. POLLOCK: I take it that  
17 your position is not that there is any magic  
18 in a judge being appointed as a judge and  
19 somebody being appointed as a member of the  
20 Labour Relations Board?

21 MR. HICKS: Not at all.

22 MR. POLLOCK: Your position  
23 is, if you took the partisan members of the  
24 Board off some of the judicial functions?

25 MR. HICKS: Right now they  
26 are appointed at pleasure, they are removed  
27 at pleasure, there is no independence in  
28 the make-up.

29 THE COMMISSIONER: So are the  
30 magistrates in large measure, they follow the





1 policy of the appointment of the provincial  
2 legislature.

3 MR. HICKS: But the appointment,  
4 generally, is life.

5 THE COMMISSIONER: But that  
6 can be changed at any time by the province,  
7 any inferior court.

8 MR. HICKS: But there would be a  
9 great hue and cry if they attempted it.

10 THE COMMISSIONER: I know, but  
11 I am not talking about the political aspects  
12 of the legislation.

13 MR. POLLOCK: Would it be an  
14 answer to your objection if you had the type  
15 of judicial function such as the cease and  
16 desist powers, or something like that, being  
17 exercised by a special sitting of the Board  
18 being composed of the chairman and the vice-  
19 chairman?

20 MR. HICKS: Well, we have got  
21 now the proper procedure.

22 MR. POLLOCK: Would you accept  
23 that?

24 MR. HICKS: No, we would not  
25 accept it because it is still involved between  
26 a politically appointed and established  
27 tribunal.

28 MR. POLLOCK: I don't know any  
29 others that exist.

30 MR. HICKS: The court is not



1 a political tribunal involved in the administration.  
2 You see, there is an overlap. They are dealing  
3 with many, many matters involving the same  
4 employers. They are bound to be influenced  
5 by what other matters have been before them,  
6 Mr. Pollock. This is the problem, we are  
7 all human, we gain certain impressions from  
8 situations of a union, of employers. When these  
9 come into play, they can't deal with them  
10 objectively because they have been dealing  
11 with other matters concerning the same parties.

12 THE COMMISSIONER: What is  
13 there in this at all except your objection  
14 to the veto?

15 MR. HICKS: Absolutely nothing.  
16 We are talking of the future.

17 MR. POLLOCK: Does that limit  
18 your whole thing, then, to just the question  
19 of veto?

20 MR. HICKS: In terms of the  
21 present framework of the statute, yes.

22 MR. POLLOCK: And you would  
23 not want any other general delegation to a  
24 board?

25 MR. HICKS: No.

26 MR. POLLOCK: Any kind of board?

27 MR. HICKS: No.

28 MR. POLLOCK: Just for the  
29 courts to decide these matters?

30 MR. HICKS: Yes, for the reasons



1 we mentioned.

2 MR. STEWART: We also make  
3 the point in here - I don't want to be  
4 misunderstood here - as to what the present  
5 Board's functions are. We have set that out.  
6 We are also dealing with the future and, at  
7 the same time, pointing out certain facts about  
8 this Board, that is, Mr. Commissioner,  
9 unfortunately, you cannot appeal the Ontario  
10 Labour Relations Board's decisions, whether  
11 they have made an error in law or whether  
12 they have given a decision ---

13 THE COMMISSIONER: Well, it  
14 depends whether they come within the jurisdiction.

15 MR. POLLOCK: It depends on  
16 whether you read the cases.

17 MR. STEWART: I do read the  
18 cases and I say it is a very narrow ground, that  
19 what the Commissioner said was, except in cases  
20 of jurisdiction.

21 MR. POLLOCK: Turning to part  
22 9, conclusions and recommendations, under  
23 the first heading, collective bargaining, really  
24 it is number 4, it says:

25 "The likelihood of resort  
26 to strike action would diminish  
27 if strike votes were not  
28 permitted pending the  
29 completion of all conciliation  
30 proceedings prescribed by the Act."





1 My understanding from that is, that if there  
2 is going to be any strike vote to have any  
3 meaning, it ought to occur at the stage when  
4 they are free to strike, that is when conciliation  
5 proceedings are over.

6 MR. HICKS: Correct. We are  
7 saying that, fundamentally, the taking of  
8 a strike vote during negotiations or mediation  
9 is totally inconsistent with the whole  
10 philosophy of bargaining in good faith and  
11 with mediation in good faith, which is the  
12 spirit of the statute.

13 MR. POLLOCK: Why is that?  
14 Because it is sort of preparation for a strike?

15 MR. HICKS: It is waving the  
16 big stick. It is coming in with a pre-  
17 determined position. Often in the course of  
18 a strike vote, they will get authority either  
19 on specified terms or within the discretion  
20 of the bargaining committee so you are sitting  
21 there with the club over the bargaining table.

22 MR. POLLOCK: In some cases  
23 employers might take some action to prepare  
24 for the likelihood or possibility of a strike  
25 during the currency of the negotiations?

26 MR. HICKS: Yes, where there  
27 has been real risk of strike demonstrated.

28 MR. POLLOCK: I don't know  
29 what that means, but when they feel that there  
30 is a possibility there is going to be a strike



1 in these circumstances, they would be, I assume,  
2 rather foolhardy if they didn't take what  
3 precautions they could take.

4 MR. HICKS: Right. The other  
5 facet of the thing that was disturbing to us,  
6 Mr. Pollock, was that we find it is misleading  
7 to the rank and file often. The leadership  
8 go to the membership and say, "Look, we need  
9 our hand strengthened at the bargaining table,  
10 give us a strike vote" and there is no under-  
11 standing on their part when they extend that  
12 strike vote to the leadership, that they can  
13 be called out on strike again without notice  
14 or without a further vote; in other words,  
15 there is an abuse of this tactic as well,  
16 it is not only a negotiation tactic but it  
17 is a membership tactic which is exploited.

18 MR. POLLOCK: Do you have any  
19 examples of that?

20 MR. HICKS: I could turn some  
21 up, I am sure.

22 MR. POLLOCK: I would be obliged  
23 to have them.

24 MR. CLAWSON: There have been  
25 dozens of cases.

26 MR. HICKS: It is very common.

27 THE COMMISSIONER: Do you really  
28 think it prejudices your position? What does it  
29 do?

30 MR. HICKS: It creates strikes.



1 It is going right to the heart of your terms  
2 of reference. It is inducive of creating  
3 more strikes.

4 THE COMMISSIONER: To take a  
5 vote during negotiations?

6 MR. HICKS: Yes, sir, because  
7 it is only available to a select few - a tool.  
8 I don't say they are at all irresponsible ---

9 THE COMMISSIONER: How does it  
10 prejudice you from your point of view?

11 MR. HICKS: It is prejudicial  
12 to our interests. It is making a cloud. It  
13 no longer is a shadow; it becomes a cloud  
14 over the bargaining table. This is not  
15 uncommon.

16 MR. CLAWSON: It vitiates the  
17 effectiveness of the conciliation procedure  
18 also and I do not say it doesn't hurt the  
19 employer.

20 THE COMMISSIONER: Does it  
21 detract from the subsequent judgment of the  
22 negotiators?

23 MR. POLLOCK: Doesn't it  
24 just reinforce the position of the head  
25 negotiator's position with the company? "We  
26 want this or we will strike" and the company  
27 says, "We are only going to give you so much;  
28 go right ahead" and then the negotiation takes  
29 place? It should be no surprise to you  
30 that they are threatening to strike. All they





1 want to do is to show that not only are they  
2 threatening to strike but they have the support  
3 of their membership; their threat has  
4 meaning.

5 MR. HICKS: We recognize it as a  
6 tactic but we suggest it is an unnecessary tactic.  
7 In the majority of cases it is misunderstood  
8 by the employees and secondly, it is inconsistent  
9 with the whole conception of trying to mediate  
10 a settlement. It flies in the face of a  
11 reasonable attitude across the bargaining  
12 table.

13 Put the shoe on the other foot  
14 and let us assume a week before the contract  
15 expires we say, "We are going to lock  
16 everybody out of here".

17 MR. POLLOCK: "We are going  
18 to lock everybody out unless you come to terms."

19 MR. HICKS: Why should not  
20 this be reasonable in negotiations?

21 THE COMMISSIONER: You don't go  
22 that far in getting a vote but you say, "We  
23 have the power to lock you out now". You don't  
24 have to take a vote but they have to, but all  
25 it creates is the authority.

26 MR. HICKS: We say - they come  
27 to us or, alternatively, we go to them - "If  
28 by such and such a date there is no agreement  
29 here, we are going to lock you out". Now,  
30 surely this is completely inconsistent.



1 THE COMMISSIONER: There is  
2 no actual intention to carry out what is  
3 threatened immediately, surely.

4 MR. HICKS: There often is  
5 here when they have the strike ballot.

6 THE COMMISSIONER: There is no  
7 doubt it may lead to greater belligerency  
8 during the negotiations.

9 MR. HICKS: That again, as I  
10 say, is abused, because employers on many, many  
11 occasions, don't understand the purpose of  
12 that kind of a strike vote, particularly when  
13 it is taken weeks, if not months, in advance  
14 of the possible deadline.

15 MR. WOXMAN: I think it  
16 induces wildcatting.

17 THE COMMISSIONER: That might  
18 be.

19 MR. WOXMAN: Well, it does, it  
20 puts the atmosphere for it and I doubt if  
21 anyone sitting at this table could dispute  
22 that.

23 MR. POLLOCK: In how many  
24 cases have the strike votes occurred  
25 after the conciliation procedure? Very rarely.

26 MR. HICKS: Pardon me?

27 MR. POLLOCK: The number of  
28 cases in which the strike vote has been taken  
29 after the conciliation procedure?

30 MR. HICKS: The minority of cases.



1 MR. POLLOCK: It is common  
2 practice now that they take the vote in  
3 advance to communicate democratically, I  
4 suppose to the negotiating committee that  
5 "This is our position and this is how far  
6 we are prepared to go".

7 MR. HICKS: But also when they  
8 take it prematurely, <sup>as we suggest</sup> /they are taking it before an  
9 ignorant, with respect, membership because they have  
10 not had a position, a final offer from the  
11 employer so there is again a misunderstanding  
12 on the part of the membership.

13 MR. POLLOCK: That is the  
14 strongest position of your case, the fact that  
15 they are taking a vote --

16 MR. HICKS: They are taking  
17 it without a position known to them.

18 MR. POLLOCK: That is the  
19 position, I think you should take.

20 THE COMMISSIONER: That is a  
21 factor that can be taken into account in the  
22 balancing of positions. You can't deny that  
23 without saying something because it is a free  
24 act on their part.

25 MR. HICKS: Right, sir. We  
26 can't see how their position is prejudiced  
27 by having the strike vote deferred until  
28 negotiations are completed.

29 THE COMMISSIONER: They would  
30 not agree with that for a moment.





1 MR. HICKS: They can still take  
2 it in 24 or 48 hours.

3 THE COMMISSIONER: But they  
4 say "Why, of course it is effective, it is  
5 like a dark shadow hanging over you like a  
6 sword of Damocles" or something of that sort  
7 and they think it is effective on you and  
8 apparently it is because you object to it.

9 MR. WOXMEN: We don't object  
10 to that, it leads to wilddatting.

11 MR. HICKS: It is the abuse  
12 of it.

13 THE COMMISSIONER: I agree,  
14 that is a very significant consequence of it.  
15 That may be so, but all I am suggesting is  
16 that there is another factor in this critical  
17 situation that is developing that may be  
18 taken into account when we are equalizing, you  
19 might say, abstractions from power.

20 MR. POLLOCK: Turning now  
21 to the conclusions that you have in relation  
22 to injunctions, we have discussed the first  
23 part of expanding interlocutory injunctions  
24 to permit the trial and then the question of  
25 abridged notice on injunction application  
26 to be served on trade unions, do you suggest  
27 anything like <sup>that</sup> has been suggested in other  
28 places, a registry of trade unions?

29 MR. HICKS: We would concur  
30 in that, yes. I think the Chamber of Commerce



1 and one or two others, Mr. Adams maybe, made  
2 that submission to you, as I understand.

3 MR. POLLOCK: Or some provision  
4 of registering an agency book as exists  
5 in the Supreme Court central office.

6 MR. HICKS: Yes.

7 MR. POLLOCK: Now, "Permitting  
8 a full right of appeal in all interlocutory  
9 injunctive orders". Does that mean what  
10 it says?

11 MR. STEWART: I think the  
12 criticism has been made that these cases  
13 never come to trial and it is a valid  
14 criticism and therefore, since they don't - it  
15 all ties in with the idea of having a summary  
16 trial, it is all the same - since they don't  
17 come to trial, obviously it is a denial in  
18 effect, of justice, if you can't appeal.

19 THE COMMISSIONER: The appeal  
20 ought to be more or less immediate because  
21 the delay is one thing that exacerbates  
22 the situation.

23 MR. POLLOCK: Are you suggesting  
24 a full appeal on fact and law and no leave  
25 from anybody?

26 MR. HICKS: Yes.

27 MR. POLLOCK: And to whom is  
28 the appeal?

29 MR. STEWART: The Ontario  
30 Court of Appeal, along with other Labour Relations



1 Board decisions.

2 MR. POLLOCK: You are striving  
3 for consistency.

4 MR. STEWART: Yes.

5 MR. POLLOCK: The fourth one  
6 suggests the Attorney General should enforce all  
7 injunction orders on either party not subject  
8 to an action. Does that include all injunctions  
9 including commercial injunctions or just labour  
10 injunctions?

11 MR. STEWART: I think our  
12 attention is directed in this to labour  
13 injunctions.

14 MR. POLLOCK: Why should the  
15 Attorney General step in in these circumstances  
16 where he doesn't step in other than by the  
17 ordinary course of the office of the sheriff  
18 who acts in his behest on an execution in the  
19 enforcement of the judgement?

20 MR. STEWART: Because the  
21 public nature of the contempt of a court  
22 order in a labour matter tends to become  
23 notorious and public and, therefore, if the  
24 employer fails to see that the order which  
25 he obtained from the court is enforced, it  
26 should not just fall to him to see the remedy  
27 he can obtain fall to the ground because the  
28 public would suffer if that occurs.

29 MR. POLLOCK: If the public  
30 would suffer then surely the Attorney General





1 has the remedy available in the guardian of  
2 the administration of justice and public order,  
3 the police force. He can send the police  
4 force in, I suppose, if there is serious  
5 violence affecting public order. Are you  
6 saying that there is no obligation existing  
7 on the party that gets the injunction?

8 MR. STEWART: Oh, there certainly  
9 is, I quite agree. I think perhaps it should  
10 almost be an undertaking when one gets an  
11 injunction that you are going to follow through  
12 with it, I quite agree with you there. I am  
13 saying if you don't, it is not just that simple.  
14 It is the same as the matter of enforcing the  
15 criminal law on the picket line: it is not  
16 enough to say that some employers don't. We  
17 just can't let the matter sit there, they  
18 should and if they don't, the enforcers of  
19 the criminal law, the Crown Attorney and the  
20 Attorney General should too, it is the same  
21 point.

22 THE COMMISSIONER: I think that  
23 is a proper case to take, a violation of the  
24 law should not be allowed. If it is not proper  
25 in the prosecution, many acts under the criminal  
26 law are not punished, that is inevitable, but  
27 where they are open and clear and you know  
28 the parties and you know what the total situation  
29 is, I think it is not good policy to allow  
30 that to go unpunished.



1 MR. POLLOCK: I don't know the  
2 status of these appendices that have been  
3 filed. Do they form part of the major brief  
4 or are they just for information? I note one  
5 of them is marked "For your eyes only". It  
6 was submitted to another jurisdiction.

7 Well, I have not got any  
8 significant questions that should be asked.

9 MR. HICKS: I understand they  
10 are all public documents. The one document  
11 had not been filed with its original source  
12 but it is now a matter of public record so  
13 there is no restriction or limitation on any  
14 of them, Mr. Pollock.

15 THE COMMISSIONER: Well, if that  
16 is all, I want to thank you, Mr. Hicks and Mr.  
17 Stewart and Mr. Clawson, for the thoroughness  
18 with which this brief has been prepared. I  
19 think the discussion has been very helpful.

20 MR. HICKS: You have been very  
21 courteous to us, sir, and Mr. Pollock. We  
22 appreciate this opportunity very much.

23 MR. POLLOCK: We will adjourn  
24 until 1:00 o'clock.

25 ---Luncheon adjournment.  
26  
27  
28  
29  
30



1 ---On resuming at 1:00 p.m.

2 MR. POLLOCK: Mr. Isaac Fram  
3 and Wallace Fram.

4 As I understand, we have in  
5 our hands a brief by Mr. Isaac Fram in relation  
6 to his experiences and it is submitted in a  
7 personal capacity, based on his experience in  
8 the last several years, in the collective  
9 bargaining and labour relations area, in  
10 relation to the garment workers, the garment  
11 industry. With him is Mr. Wallace Fram who  
12 is, I understand, going to discuss a little  
13 bit of background as far as the Industrial  
14 Standards Act applies to this type of industry  
15 and other industries, just a general background  
16 note to more or less set the perspective  
17 into which the needle trade industries now  
18 find themselves.

19 I don't know whether Mr. Isaac  
20 or Mr. Wallace is going to start.

21 MR. WALLACE FRAM: Mr.  
22 Commissioner, with your permission, I propose  
23 to present the Isaac Fram brief, if it meets  
24 with your approval. After that is presented,  
25 I believe it would flow more logically, then,  
26 to make a brief extemporaneous comment on the  
27 Industrial Standards Act and its present  
28 application and personal suggestions as to  
29 its possible future application.

30 The reason why I propose going





1 at it in that way is that the Industrial  
2 Standards Act became a factual matter pertaining  
3 to the needle trade industry and particularly  
4 the sports and dress industry about 1958, to  
5 the cloak industry, which was ladies' suits  
6 and coats, I would say a few years prior to  
7 that and to the men's wear industry in the  
8 1940's.

9 I would prefer to go back and  
10 approach it on a time sequence basis to the  
11 brief that my father has presented. Is it  
12 the practice, sir, to read the brief through?

13 MR. POLLOCK: We have both  
14 read the brief. It is 12 pages. I should  
15 say that the option is yours. We are prepared  
16 to have you present an analysis of it or  
17 read it, if you wish.

18 MR. W. FRAM: I would like to  
19 read the brief if I may. There are certain  
20 portions where I may stop and interject. Feel  
21 free to interrupt at any time.

22 MR. POLLOCK: If you are  
23 going to read the brief, I guess there is no  
24 need of that appearing in the transcript as  
25 long as there is a note to that effect.

26 MR. FRAM: Yes, that is correct.

27 (Mr. Fram reads the brief down to "I agree to  
28 form them into an organized group")  
29

30 If I might interrupt my reading



1 and say that this is to my knowledge, the one  
2 time one has felt the existence of industry-  
3 wide bargaining.

4  
5 (Mr. Fram reads brief down to "Governmental  
6 intercession if necessary".)

7 This is a recognition, gentlemen,  
8 that flows from both the previous recommendations  
9 on this in that the people there should be  
10 compelled, if necessary, to continue talking to  
11 each other through the length of an agreement  
12 and not, as is now the case, that in many  
13 industries they talk and agree when there is  
14 arbitration. There should be a standing  
15 committee and in any case there are always  
16 issues upon which there should be discussions.

17  
18 (Mr. Fram reads brief down to "a powerful  
19 weapon in the hands of employees" page 7.)

20 Acting normally, Mr. Commissioner,  
21 on the side of employers I would agree to that  
22 comment. It is very appropriate.

23 (Mr. Fram reads brief down to "a full and  
24 fair hearing" page 7.)

25  
26 This, I submit, is the crux of the  
27 injunction problem.

28 (Mr. Fram reads brief down to "Respect for the  
29 law is felt to be prejudicial to one's own  
30



1 interest" page 8.)  
2

3 In this situation they are  
4 faced with the problem of economics with which  
5 the average individual has little or no  
6 experience. There must be a bias.

7 THE COMMISSIONER: A bias of what?

8 MR. FRAM: In my opinion, a  
9 bias on the part of that individual - not a  
10 conscious bias: I don't for a moment suggest  
11 that - but in a situation of a kind he has  
12 not been connected with before, the welfare  
13 aspects of a labour dispute, the violence -  
14 not necessarily physical violence but violent  
15 attitudes are a realistic part of the picture.

16 THE COMMISSIONER: All the  
17 court decides is whether or not an unlawful act  
18 has been committed and I don't understand  
19 that anybody yet has urged properly that the  
20 emotional condition of a man justifies him in  
21 violating either the criminal law or the law  
22 of tort.

23 MR. W. FRAM: With respect, My  
24 Lord, the emotional aspect of a man would  
25 not exonerate him from the punishment under  
26 the criminal law; we will not get into that.  
27 On this situation admittedly it would not.

28 THE COMMISSIONER: It would  
29 not what?

30 MR. W. FRAM: The emotional





1 situation of a striker committing violence  
2 would be criminal and would not exonerate him under  
3 the sanctions of the code. One aspect of that  
4 is that whether a possible offence under the  
5 code is an offence in itself depends upon  
6 the whole situation. If I may use an example,  
7 if in this board room, I struck the reporter  
8 on the shoulder it would be clearly assault  
9 within this civilized situation. If I was  
10 a rioter on Jarvis Street, within that  
11 environment, and with police standing by my  
12 elbow, if I struck a fellow-rioter, even in anger  
13 at the time, I suggest very strongly, sir, that  
14 the police would not arrest me.

15 THE COMMISSIONER: You have  
16 violated the law, though, in doing that.

17 MR. W. FRAM: With respect,  
18 it depends on the situation.

19 THE COMMISSIONER: But that  
20 does not affect the fact that it is still  
21 an illegal act.

22 MR. W. FRAM: We are talking  
23 in the abstract, though. It depends what  
24 act is illegal.

25 THE COMMISSIONER: I am not  
26 talking in the abstract at all: I am talking  
27 about very realistic matters that occur at  
28 times and all I am saying is that the criticism  
29 of the court for not introducing good law  
30 is not well based. If you want the privilege,



1 you, anybody, if anybody wants the privilege  
2 of allowing concessions to emotionalism, that  
3 expresses itself really on the picket line,  
4 all they have to do is petition the  
5 legislature to make that valid and that will  
6 be the end of it but until it is, I would  
7 say no court has any power to do that.

8 MR. W. FRAM: But the argument  
9 put - and I am not putting the argument on  
10 my own behalf - but the argument put by unions,  
11 for example, with regard to this is that  
12 violence on a picket line should be taken  
13 care of by way of charges and possible convictions  
14 under the provisions of a code where the  
15 individual would have a proper trial according  
16 to the rules we all respect.

17 THE COMMISSIONER: A proper  
18 trial can only determine two things - what  
19 were the actual acts, did they violate a law?

20 MR. W. FRAM: And punishment  
21 flows therefrom. Now, what we are talking  
22 about here is an injunctive procedure which  
23 forbids a total activity - I am not taking the  
24 extreme situation, I am taking the more common  
25 situation - you could have, if you have a  
26 100-man picket line, all of whom are committing  
27 violence and I think the injunction would lie  
28 but if you have a 100-man picket line where  
29 one or two incidents of violence takes place  
30 the suggestion made by those on the other side,



1 may I say, is that the criminal law sanction  
2 should be applied to those two individuals  
3 and the other 98 should be permitted to carry  
4 out their legal economic activity. The  
5 complaint of the unions in this regard is  
6 that because of the violence of two men, in  
7 this particular situation, the otherwise proper  
8 activity of the group is prohibited.

9 THE COMMISSIONER: I would  
10 not say that at all.

11 MR. W. FRAM: Not prohibited,  
12 I might be carrying along too far on their  
13 argument, but it is severely restricted. Their  
14 argument runs that severely restricting picketing  
15 in its real sense, and I suggest there is  
16 another legal fiction as to what is permissible  
17 which is information picketing.

18 THE COMMISSIONER: It, of  
19 course, depends on the language of the particular  
20 injunction. There are cases in which all  
21 they are forbidden to do is an illegal act.  
22 If they don't commit an illegal act, the  
23 injunction won't apply to them.

24 MR. W. FRAM: In my experience,  
25 sir, most, if not all, any orders I have had  
26 cause to be party to, or look at, prohibit  
27 picketing in the usual sense of picketing  
28 which is mass picketing. They permit informational-  
29 type picketing with two or four men per gate and  
30 very often provide specifically for real access.





1 THE COMMISSIONER: Do you think  
2 the numbers will change the purpose of picketing?

3 MR. FRAM: Yes.

4 THE COMMISSIONER: And what is  
5 the ultimate in mass that is justifiable that  
6 is not justifiable in the individual?

7 MR. W. FRAM: With respect, sir,  
8 it is coercion. I am being honest. One of  
9 the legal fictions we have a law maintaining  
10 is that picketing is for informational purposes.  
11 We have referred to that in the brief but  
12 I suggest that the realistic appraisal of  
13 picketing in today's society and it has been  
14 this way since before I was born, of course,  
15 is that picketing has a number of functions.  
16 One is to impart information, another is to  
17 persuade (the apologetic way of putting it)  
18 to persuade other persons not to take up the  
19 jobs, I think that word was used, to persuade  
20 other workers not to take the jobs of those  
21 striking. But I suggest, realistically, that  
22 it is a matter of coercion.

23 THE COMMISSIONER: I entirely  
24 agree with you but the question is, is that  
25 legal?

26 MR. W. FRAM: I suggest, sir,  
27 the question is that it is done and it has  
28 been done for many years and that if coercion,  
29 falling short of actual violence, no society  
30 will respect that, if coercion falling short of



1 criminal activity is the realistic activity in  
2 this area, and it therefore should be  
3 realistically recognized.

4 THE COMMISSIONER: And what it  
5 does is to compel men to do what they have a  
6 legal right not to do.

7 MR. W. FRAM: Quite.

8 THE COMMISSIONER: You are  
9 perfectly frank and I think you are stating  
10 the reality.

11 MR. W. FRAM: Yes, I am trying  
12 to, sir. That, I suggest, with respect, is  
13 another fiction, stopping men from doing that  
14 which they have a legal right to do, which is  
15 the legal function of every man who is free  
16 to offer his labour.

17 THE COMMISSIONER: I think<sup>if</sup>/your  
18 right to do what you have a right to do, if you  
19 are doing what you have a right to do were  
20 interfered with, somebody would hear about it.

21 MR. W. FRAM: My suggestion, sir,  
22 is this: That in industry - let us take  
23 manufacturing as a simple example because  
24 the degree of union organization is high - I  
25 believe the last C.B.S. statistics were some  
26 71 per cent or 70 per cent. In Toronto, I  
27 suggest the metropolitan area would be higher.  
28 Now, within that area, the freedom of an  
29 individual to offer his labour is restricted  
30 by the fact that the majority of the establishments



1 require union memberships, they require  
2 payment of union dues, whether by actual  
3 joining or by form provisions. This fiction  
4 of a man being able to offer his labour for  
5 what he bargains at is, I suggest, unrealistic  
6 and false because he doesn't even bargain for  
7 his labour, the rates are scheduled.

8 THE COMMISSIONER: He hasn't  
9 got the right to compel other people to join  
10 with him in any particular bargain. He can't  
11 coerce them. They have a perfect right to  
12 refuse.

13 MR. W. FRAM: But my submission  
14 is that the realistic situation is that the  
15 majority of workmen have their working conditions,  
16 their wages, their union allegiance determined  
17 for them.

18 THE COMMISSIONER: Certainly,  
19 they have authorized that.

20 MR. W. FRAM: Taking it, for  
21 example, as a stranger coming to Toronto, and  
22 going to work, then I suggest that it is  
23 determined for him.

24 THE COMMISSIONER: It may be.

25 MR. W. FRAM: And therefore,  
26 take the same establishment and a picket line  
27 there, the coercion is not that terrible where  
28 he didn't have the free choice in the first  
29 place. All I am suggesting, sir - and we all  
30 do this in our field - with the greatest of





1        respect is that    we hear    catch phrases and  
2        sometimes the catch phrases tend to haze the  
3        realistic, truthful, factual appreciation of  
4        what goes on and what exists.    There is a limit  
5        and I would be the first to argue for this,  
6        there is a limit not only in the criminal law  
7        but in the civil area where freedoms should  
8        apply and should be made to rule but there  
9        must also be a realistic appreciation of what  
10       the individual really has a right to do in  
11       industry which brings it to the picket line.

12                    THE COMMISSIONER:    All I am  
13       saying is that that modification which you  
14       frankly admit is something that ought to be  
15       allowed and it is realistically experienced;  
16       all I say is that if you want that, you have  
17       a legislature to go to but it is not a  
18       legitimate criticism of the courts that they  
19       don't create that new and entirely new  
20       attitude towards what are recognized normally  
21       as wrongs.

22                    MR. W. FRAM:    Yes, I follow, sir.  
23       I wish I was as scholastic at this point, in the  
24       argument countering that.

25                    THE COMMISSIONER:    I don't think  
26       scholasticism would help you very much because  
27       I think the elements are too simple for that.  
28       The subtleties that scholasticism may resort  
29       to, really must be ruled out realistically.

30                    MR. W. FRAM:    Yes, the argument



1 put - I feel like the puppet here, pulled by  
2 strings, I am putting arguments which are  
3 not necessarily mine ---

4 THE COMMISSIONER: No, don't  
5 feel any such thing.

6 MR. W. FRAM: The argument  
7 put against that is that the courts are applying,  
8 for argument's sake, and to keep the discussion  
9 fairly narrow, in an injunction situation, the  
10 courts are applying law which has never been  
11 legislatively approved law. The common law  
12 has grown up like Topsy as we know, and it has  
13 the sanction of time and the argument put  
14 against that is that the common law, with its  
15 sanction of time, is extended into this situation.

16 Let me rephrase that: On  
17 the one hand you have a common law right to  
18 property and use of property. You have, on the  
19 other hand, a labourer's right, shall we say,  
20 to strike and these two conflict.

21 THE COMMISSIONER: Let me ask  
22 you one question: Suppose you petitioned  
23 the legislature tomorrow to have it enacted  
24 positively and affirmatively that in the case  
25 of a strike, all the strikers shall be permitted  
26 and have the right to congregate around the  
27 entrance to a plant, say, for the purpose  
28 of coercing the management which will result  
29 in closing the doors, do you think you would  
30 get half a dozen supporters for that?



1 MR. W. FRAM: No.

2 THE COMMISSIONER: And yet,  
3 that is what you want our courts to decide.

4 MR. W. FRAM: No, sir, what I  
5 am suggesting --

6 MR. POLLOCK: Not you, Mr. Fram,  
7 because you are a management representative.

8 MR. W. FRAM: What I am suggesting  
9 is that the courts are applying a law which  
10 has never been legislatively approved. This  
11 is the argument which is put and there is great  
12 merit to the argument, I submit.

13 MR. POLLOCK: I suggest  
14 probably the argument is better on the  
15 question of policy if you don't take the  
16 obvious picket line or form of picketing, the  
17 violence aspect of it, the intimidatory  
18 aspect of picketing as an example of doing  
19 something, of making law. You are probably  
20 on sounder ground if you take the example in  
21 Herseys of Woodstock. This may be. The right  
22 to trade must dominate in that area ---

23 MR. W. FRAM: There is no  
24 such animal as far as labour relations are  
25 concerned. I fully support that argument.

26 THE COMMISSIONER: Even that  
27 depends upon the definition and scope that  
28 you give to the conception of picketing.

29 MR. W. FRAM: That is absolutely  
30 correct.





1 THE COMMISSIONER: Now, no one  
2 would accept that intimidation was the real  
3 object of the realized action.

4 MR. W. FRAM: That is right, Mr.  
5 Commissioner, and this brings us, of course,  
6 to the point that no one in all probability  
7 would approve coercion as you described. At  
8 the same time there is the problem and this is  
9 the realistic situation of what goes on.  
10 Taking that realistic situation and taking the  
11 application of the injunction situation as we now  
12 have it, there is a very easy solution to it,  
13 of course. As we now have it, you do have  
14 a conflict which does something which is very,  
15 very bad for society. It results in many  
16 individuals in the labour field having a  
17 complete disregard for, more than a disregard  
18 for - almost a hatred of the legal process and  
19 that, I suggest, is very fundamental.

20 THE COMMISSIONER: That is  
21 true so far as labour relations are concerned  
22 but when the rest of the field of law is brought  
23 into question, they are among the first to  
24 call upon government to do something. The  
25 government is the legislative process and of  
26 course, the legislature is the vehicle for the  
27 enforcement of law.

28 MR. W. FRAM: Yes, in that sense.  
29 The effect of prohibition in society in the  
30 thirties was to compel or bring about a



1       disrespect of the law regarding prohibition but  
2       it also brought about a great disrespect for  
3       law generally in many areas which, I submit  
4       is most unfortunate.

5  
6       (Mr. Fram reads brief to "to the issues involved"  
7       page 9.)

8                   THE COMMISSIONER:    There is a  
9       strict limitation to that.

10                  MR. W. FRAM:    Yes, as I said  
11       he will report to the judge.  Now the  
12       probabilities are that the judge would read  
13       the report, he would give the report great  
14       weight.

15                  MR. POLLOCK:    With the exception  
16       that the reference which presently exists, of  
17       Mechanics Liens to the Master is probably the  
18       reference which has gone as far as any of them  
19       to decide a right and that is being now  
20       challenged in the courts as being unconstitutional.

21                  MR. W. FRAM:    My proposal,  
22       gentlemen, is simply this:    That the matter  
23       would come before a judge, he would refer it for  
24       a report to the Board.

25                  THE COMMISSIONER:    But that is  
26       only in accordance with established practice  
27       largely in equity where a report would be made,  
28       say, on an estate.  If you determined the  
29       rates in relation to rights then you have to have  
30       a strictly judicial process.



1 MR. W. FRAM: Well, my  
2 suggestion is that the facts be found and  
3 reported by the board which carries great  
4 weight in the field and the court would then  
5 make the determination on the facts as found.

6 MR. POLLOCK: Well, how does  
7 that help you in these circumstances? In the  
8 Hersey case where there is no question of  
9 violence, it is a question of policy, and  
10 whether this type of activity ought to be  
11 permitted or ought not to be permitted. The  
12 board can't decide that. They would find  
13 as was accepted, the facts in Herseys were  
14 agreed.

15 MR. W. FRAM: Well if Herseys  
16 requires legislative enactment, that is  
17 the only answer I can give you to that case.  
18 That case, with respect to the judiciary  
19 generally, is completely haywire. It is a  
20 very clear exposition of what the court in its  
21 wisdom felt to be economic reality and the  
22 court simply enforced what they thought was  
23 economic reality without any legal basis or  
24 legislative basis for it.

25 THE COMMISSIONER: You said  
26 economic reality?

27 MR. W. FRAM: Yes, accord  
28 itself what the economic reality was, to use  
29 your phrase, that there was a basic right  
30 to trade. This is very interesting, I may think





1 that or you may think that there is a right  
2 to trade as opposed to a right to picket on  
3 a secondary basis or a primary basis but  
4 the law doesn't say that.

5 THE COMMISSIONER: I would not  
6 say there was a right to trade, I would say  
7 there is a liberty to trade. It is an  
8 activity that has not been interrupted by  
9 regulation except in minor matters with which  
10 we are not concerned. But I think in the  
11 Hersey case, if you consider really what was  
12 involved, it was a property right, to go in  
13 and out of your own property. Now that is  
14 legal, that is not really a liberty of  
15 action, that is a secured right and if you  
16 interfere with that, even by your insistence  
17 on persuasion to a degree that will nullify  
18 the exercise of that right to go in and out,  
19 then the persuasion must be modified. The  
20 persuasion itself is a liberty of action.  
21 There is nothing that says that you can't  
22 go to persuade and you can't go to persuade  
23 when the person whom you address doesn't want  
24 to be persuaded or doesn't want to be informed.

25 MR. POLLOCK: I think your  
26 position, Mr. Fram, is that the Hersey case  
27 involved a value judgement on which there  
28 had been no legislative guidance, is that  
29 your position?

30 MR. W. FRAM: That is my



1 position definitely. And I would add to that  
2 that the court, in regard to the facts of that  
3 case, had no right to enforce a value judgement  
4 unless there is a legal basis for it.

5 THE COMMISSIONER: Well, I  
6 must say, personally, I am not impressed by  
7 calling it a value judgement. I think we  
8 have got along for about a thousand years  
9 without that expression taken from academic  
10 circles and I think it rather hides the real  
11 questions that lie underneath. So I won't  
12 discuss Hersey because I am not sufficiently  
13 familiar with it, but all I say is that you  
14 have no power in a court to do something that  
15 the legislature would repudiate, which you  
16 admit would be the case.

17 MR. W. FRAM: That applies  
18 as well, to the Hersey decision, sir.

19 THE COMMISSIONER: Maybe it  
20 does, I don't say anything about that.

21 MR. W. FRAM: Referring back  
22 to the brief again:

23 (Mr. Fram continues reading brief from "An  
24 alternative procedure" to "...with the real  
25 purpose of the injunction procedure", page 10.)  
26

27 MR. POLLOCK: You say that  
28 that would appear to be a greater fairness  
29 in the public mind than if they had government  
30 by experts?



1 MR. W. FRAM: No, a separate  
2 paragraph, Mr. Pollock. What we have suggested  
3 is that the injunction procedure, generally  
4 speaking, be varied so as to provide a full  
5 and fair hearing of the issues involved. We  
6 have, in this country, an historical dependence  
7 upon viva voce evidence and would include  
8 the hearing of viva voce evidence and would  
9 give the sitting judge or the sitting  
10 referee, as the case may be the authority of  
11 determining the  
12 criteria that we have of determining truth  
13 and falsity. And it also, naturally, would  
14 include the right to a full hearing bringing  
15 evidence to contradict evidence in chief and  
16 the appearance of justice would be satisfied  
17 and justice, of course, would also be  
18 satisfied.

19 MR. POLLOCK: We are at  
20 cross purposes, I think, because your  
21 position is that after this hearing the court  
22 can consult with a knowledgeable authority?

23 MR. W. FRAM: That is just  
24 an alternative suggestion.

25 MR. POLLOCK: Which you  
26 suggest might be the Labour Relations Board  
27 after the hearing is held. Now, what is this  
28 consultation going to do? Is it going to be  
29 some kind of expert advice to the judge as to  
30 what action he ought to take?





1 MR. W. FRAM: As to the  
2 appreciation of the facts, I think what we  
3 were trying to get at on this point is this,  
4 that there is a constitutional hang-up on  
5 using a group of men who have, over the years,  
6 developed a high degree of skill. I am talking  
7 about the members of the Labour Relations Board  
8 and they are respected in a practical sense  
9 which is important, by the people in the field.  
10 Now, the constitutional hang-up is that you  
11 can't simply take the question of injunctions  
12 and give it to the board and say "Here,  
13 gentlemen, take care of it". Our suggestion  
14 is that the Board with the proper hearing would  
15 pretty well, I suggest, solve the problem,  
16 but we can't do that constitutionally. All  
17 we are trying to do in those two paragraphs  
18 is to find ways of getting around the  
19 constitutional hang-up. An alternative  
20 which comes to mind is designating a sitting  
21 judge or judges as a panel who would become  
22 expert in the field and I think this is the  
23 crux of the matter.

24 MR. POLLOCK: The way  
25 everything started in 1943 with the labour  
26 court.

27 MR. W. FRAM: Yes, and that  
28 didn't do very well and there is the issue  
29 of the problem which is a helpful comment  
30 to our submission as to why labour matters, when



1 they hit the courts, find themselves in trouble  
2 because there is a whole area of expertise  
3 of lack of confidence by the people in the  
4 field, a whole area of knowledge, an area  
5 of approach and appreciation of the facts  
6 that people steeped in the labour relations  
7 field have and which the judges in most cases,  
8 with respect, do not have.

9                   An example of that, My Lord,  
10 is this: That I have had a degree - this  
11 is being subjective for a moment, if I may -  
12 I have had a fair degree of experience in  
13 and     being open to the practicalities of  
14 the labour relations field and I am not  
15 shocked by violence, not too serious violence  
16 in this area. I am not shocked by coercion  
17 but, with the utmost of respect, you may be  
18 or other judges.

19                   THE COMMISSIONER:     As somebody  
20 said, the many sidedness of truth.

21                   MR. W. FRAM:     Yes.     When a  
22 person comes in, shall we say, from outside  
23 and is applying the common law built up  
24 over many years which may not be up to date,  
25 shall we say, with realism and all the law  
26 depends on this realism, nothing else, I  
27 suggest - realism, liberties and rights, but  
28 realism above all, when you apply rules -  
29 there are rules, they are there I will be the  
30 first to acknowledge, the rights of property



1 and so on - into this situation you have a  
2 conflict, you have a problem unless the  
3 person applying them is steeped in this  
4 knowledge so that he can appreciate the  
5 proper application of these rules to the  
6 factual situation. I can appreciate the  
7 factual situation for what it really is.

8 MR. POLLOCK: I suppose your  
9 opinion applies equally to criminal cases  
10 in that one who sits on criminal cases must  
11 be one who has had some criminal experience -  
12 I don't mean one who has been a criminal, but  
13 take for instance, Mr. Justice Hartt  
14 who has had considerable criminal experience.

15 THE COMMISSIONER: The one  
16 who had gone through penitentiary would be  
17 most able and, as a matter of fact, that is  
18 being done in our parliament today.

19 MR. W. FRAM: One out of two  
20 hundred and something.

21 MR. POLLOCK: One admitted  
22 out of two hundred and something.

23 MR. W. FRAM: Yes, we may have  
24 more.

25 MR. ISAAC FRAM: In this  
26 particular instance, My Lord, that you refer  
27 to, at least we have had the man's own experiences  
28 to prove his own interest in correction for it.  
29 His experience has taught him that.

30 THE COMMISSIONER: Yes, I will





1 agree.

2 MR. W. FRAM: I would point  
3 out in that regard that there is a tendency,  
4 although it is not official and not recognized,  
5 there is a tendency when you observe the  
6 serious criminal cases that are up for trial  
7 that the judges who tend to have those cases  
8 are the ones who have the experience in the  
9 matter, either by way of a practice in the  
10 criminal field or, having had numbers of  
11 trials previously.

12 MR. POLLOCK: Every judge  
13 sits in regular rotation on assizes and criminal  
14 cases, whether he has had any particular  
15 experience or not.

16 MR. W. FRAM: Observing it  
17 from my side of the fence there seems to be  
18 a tendency for certain ones to take that.  
19 There was a habit in the Ontario courts prior  
20 to former Chief Justice McRuer's retirement  
21 where your injunction problems tended to flow  
22 to Chief Justice McRuer and this was very  
23 good and very proper because he was quite  
24 expert in the field, even though I might  
25 disagree with him on certain facts.

26 THE COMMISSIONER: There is  
27 no doubt about it at all. I think it is  
28 exemplified in the British Court of Criminal  
29 Appeal. Because there were subtleties in  
30 criminal law, because the essence of crime is



1 intent, it is the mind and that is a subtle  
2 thing to appreciate, and therefore, experience  
3 plus capacity becomes a very important feature.

4 MR. W. FRAM: You would have  
5 to introduce other relationships than under the  
6 criminal law because the criminal law is  
7 fundamental.

8 THE COMMISSIONER: What you  
9 are suggesting should be taken into account  
10 in determining civil rights where the situations  
11 essentially differ.

12 MR. W. FRAM: That may be  
13 what is needed.

14 MR. POLLOCK: Of course, I  
15 suppose, even in criminal law you would say  
16 it provides justification of certain activities.

17 THE COMMISSIONER: It is not  
18 sufficient to make that general statement.  
19 What other justifications are admitted by  
20 the criminal law?

21 MR. FRAM: You can number them  
22 on your fingers. Returning to the submission:  
23 (Mr. Fram continues reading brief from  
24 "Connected with the effect, page 10 to "...liable  
25 to infringe the public peace" page 11.)  
26

27 MR. POLLOCK: Do you base this  
28 on any basis of "Those who plead equity must  
29 do equity". The "clean hands doctrine"?

30 MR. FRAM: No, this document



1 was prepared by Isaac Fram and I would give it  
2 some support personally.

3 MR. POLLOCK: I would think so.

4 MR. W. FRAM: Yes, I do. I  
5 suggest the background of it is that you have a  
6 labour relation situation and I suggest that  
7 society asks a duty on both parties to a  
8 labour relations situation to discuss and  
9 settle without resort to a strike weapon and  
10 there is a failure by the parties if a strike  
11 results and in my own somewhat brief experience,  
12 I have never been involved with a situation  
13 where the employer is not at fault to at least  
14 as much a degree as the union is in the  
15 breaking down of the negotiations and  
16 collective bargaining process. The process  
17 breaks down, the union strikes, the employer  
18 then seeks the aid of the law to, in effect,  
19 protect his property rights, which I suggest  
20 is what the law is concerned with, but what  
21 society is concerned with, and I suggest more,  
22 is the keeping of the peace. Now if peace is  
23 to be kept by an injunction restraining striking  
24 or striking by other than one or two pickets  
25 then the other side, the employer, should cease  
26 activity which, in itself would bring about a  
27 breach of the peace either at that time or soon  
28 thereafter namely, if he gets  
29 an injunction to prohibit mass picketing, he then  
30 should be forbidden to carry out any activity  
which would inflame the picketers, the non-





1 picketers at that point, to again become picketers  
2 in flagrant breach of the laws edict which  
3 is somewhat the situation we had in Peterborough.

4 THE COMMISSIONER: What have  
5 you to say if both of these methods or actions  
6 or crises are prohibited - the picket  
7 line and the employment of strike breakers?

8 MR. I. FRAM: I would say  
9 that would be an acceptable procedure,  
10 personally, from my own experience. That  
11 would be a desirable procedure. Striking  
12 under those circumstances - or rather shall  
13 we say "picketing" - is rendered unnecessary.  
14 It is merely a matter of informing the public  
15 by whatever means they may have, other than  
16 picketing, but at the same time, reassure the  
17 union that the strike is legitimate in the  
18 sense that the employer is not being permitted  
19 to deliberately break that strike by employing  
20 underhanded methods. I would say that would  
21 be a fair approach.

22 MR. POLLOCK: How would you  
23 look at it from the point of view of the  
24 employer who was faced with demands from a  
25 union that he can't economically meet?

26 MR. I. FRAM: That is dealt  
27 with later on in the brief. I do suggest  
28 that these things do happen, they have  
29 happened in the past and there is no reason  
30 in the world to suppose they won't happen in



1 the future but there has to be provided  
2 machinery if of course the employer - and again  
3 I come back to the original matter pertaining  
4 to injunctions and so on - my contention has  
5 been, and this is as a result of experience,  
6 if an employer feels he has no recourse other  
7 than to negotiate, he will negotiate. If,  
8 under the threat of necessary or compulsory  
9 arbitration, he will negotiate feeling that his  
10 best measure of justice will be arrived at,  
11 not by conflict but by mutual agreement  
12 whereas the fear or the position of unfair  
13 requests on the part of the union would quite  
14 obviously, if they had the complete one-sided  
15 power or authority to impose it, create  
16 disruption and destruction, I would use the  
17 term, but the approach has to be - we have  
18 at the present time, conciliation procedures  
19 where they try to, under the Labour Relations  
20 Board where attempts are made to reconcile the  
21 differences between the two parties. If they are  
22 not acceptable then, of course a strike results.  
23 But I think that the regulations pertaining  
24 to that should go a little further. I think  
25 that where conciliation fails there should  
26 be compulsory arbitration. I think compulsory  
27 arbitration examines all facets of the issue,  
28 economic factors as well as the industrial  
29 facets of the issue and I think that should  
30 be binding on both parties. I think that is



1 the ultimate for both parties.

2 MR. POLLOCK: You just eliminated  
3 the strike.

4 MR. I. FRAM: Yes, I am not  
5 suggesting that the first step should be  
6 compulsory arbitration. I think experience  
7 will teach us that once compulsory arbitration  
8 becomes a fact of law, that the very same  
9 employers who would find difficulties in  
10 completing negotiations would make an entirely  
11 different approach and so would the unions.

12 THE COMMISSIONER: Well, at  
13 the present time they are under the domination  
14 of a shibboleth about freedom in bargaining  
15 and that seems to be a sort of barrier to the  
16 reception of any other ideas such as you suggest.

17 MR. I. FRAM: The difficulty  
18 is this: That the unions have lived for  
19 so many years with what they consider a  
20 curtailment of their own powers and their  
21 own rights. They have lived with that since  
22 the 19th century. They go back to the days  
23 and they think back to the days when two  
24 men discussing, dealing with an employer,  
25 were charged with conspiracy. These things  
26 are not forgotten, they remember those things  
27 and they are very, very jealous of their powers  
28 and until such time that they can be thoroughly  
29 convinced ----

30 THE COMMISSIONER: I think,





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1        though, you have got to add this to the present  
2        situation, that they have become conscious  
3        of the power now of united action which was  
4        denied before and the consciousness of such  
5        a power inevitably leads to a certain arrogance.

6                    MR. I. FRAM:     It does.

7                    THE COMMISSIONER:     Let me suggest  
8        this to you because I think it is important  
9        enough to ask your opinion, after your  
10       experience.     Suppose you prohibit now, both  
11       picketing and the employment of strike breakers  
12       and you have a situation where the union is  
13       powerful and the employer has a relatively  
14       small business which can't, in power, meet  
15       that of the other, you can have, I think,  
16       an independent tribunal that would permit  
17       him whatever was necessary to preserve his  
18       existence by the employment of strike breakers  
19       if necessary.     YOU would have a certain  
20       flexibility there.

21                   MR. I. FRAM:     Well, the only  
22       difficulty about a situation of that kind is  
23       where you draw the line and where you deal  
24       with an employer under the circumstances you  
25       relate or, as the general application of a  
26       principle or a rule.

27                   THE COMMISSIONER:     But you would  
28       have to have a very competent tribunal.     Now,  
29       I am making a statement I can't support by  
30       actual reference but you can have, certainly,



1 situations in which the action of a union has  
2 destroyed a business.

3 MR. I. FRAM: Oh, definitely.

4 THE COMMISSIONER: Well, you  
5 know the indications of that. A tribunal  
6 could see from the reports of the businesses  
7 themselves, by the books, by the standing of  
8 the business and they could arrive at a  
9 conclusion that the demands of the union were  
10 so radical and so unreasonable as to make it  
11 impossible for that business to continue.  
12 Surely they could arrive at a fair conclusion  
13 that that was the case.

14 MR. I. FRAM: May I perhaps  
15 illustrate that by a specific example that  
16 has taken place where an identical set of  
17 circumstances applied as you have just now  
18 related. This went back in 1939, it is  
19 quite a long while back, where a situation  
20 of that kind had arisen where the union were  
21 making in this particular instance, where they  
22 were covered by a labour agreement where each  
23 company settled its costing on a piece-work  
24 basis as it applied to this particular company  
25 and the union at that time felt that this  
26 employer was getting away with things, so to  
27 speak, getting far too low a cost of production  
28 in relation to others and the result of it  
29 was that the union contended they should up  
30 his prices to a point that I concluded at that



1 time, as did the employer, would automatically  
2 lock his doors. That would have been the  
3 ultimate result.

4 Now we had recourse at that  
5 time to Professor Finkleman and we had agreed,  
6 and he in turn sent in his accountant to  
7 examine the records of the company, its  
8 capabilities and its requirements for  
9 continuity of operation and he made his  
10 finding based on his accountant's report  
11 and the union was bound to accept it. The  
12 result was there was a very, very serious  
13 modification of their demands to a point where  
14 the employees, who at first resented it, were  
15 told - now this is where disciplinary action  
16 comes in - they were told that "This is what  
17 you get and nothing more and the alternative  
18 is to leave the place of employment or leave  
19 the union if you like". But this was a decision  
20 that was final and binding on his employees.

21 THE COMMISSIONER: By the union.

22 MR. I. FRAM: Not by the union  
23 originally, but by the impartial arbitrator  
24 whose decision was imposed on them.

25 THE COMMISSIONER: That is  
26 quite consistent with what I suggest.

27 MR. I. FRAM: This is why I  
28 say if necessary, compulsory arbitration.  
29 First of all my contention is that this  
30 should be a required provision in every union





1 contract, every union-employer contract. But  
2 whether or not they impose that is a matter  
3 between the two parties. But in the final  
4 analysis, there should be an enactment under  
5 law which will impose compulsory arbitration  
6 where they fail to agree.

7 THE COMMISSIONER: I can say  
8 to you that I think that is the civilized  
9 manner of dealing with these things but you  
10 can't get one union or one employer who will  
11 admit that.

12 MR. I. FRAM: I think at the end  
13 of the brief, I make particular reference to  
14 that in which I suggest that this can't be done  
15 overnight, it will take time, but it is not  
16 merely a matter of time. It is merely the  
17 thought and approach and the attitude that  
18 has to be corrected.

19 THE COMMISSIONER: It is the  
20 attitude towards these questions that creates  
21 the difficulty.

22 MR. I. FRAM: That is a serious  
23 problem and I think the attitude can be corrected  
24 by the practical application under law where,  
25 while there may be resentment - and this is  
26 quite natural there will be resentment if,  
27 for example, at the present moment our government  
28 would decide to enact labour legislation  
29 which would impose compulsory arbitration,  
30 there would be terrific resentment by the union.



1 But I think the adjustment would come as you  
2 would have an entirely different attitude as  
3 we have today in Sweden, for instance.

4 THE COMMISSIONER: Then, let  
5 me suggest this: That if you can, say, get  
6 rid of picketing and quarrelling and snarling  
7 and ending of strike breakers, then if there  
8 is any danger of an industry being destroyed  
9 or even of a union being destroyed, a tribunal  
10 could say or give authority to say "This must  
11 be settled either by allowing strike breakers  
12 to come in or/and keeping the picket line  
13 abolished" or it may direct this issue to be  
14 determined by arbitration.

15 MR. I. FRAM: Yes. Any one  
16 of these alternatives would be binding. The  
17 important thing is to recognize that there is  
18 or there may be, under certain given circumstances,  
19 a justifiable contention by either of the  
20 parties which has to be reconciled either  
21 by mutual agreement or fairly mutual agreement  
22 by an outside body and again I say governmental  
23 appointed agencies for that purpose examining  
24 every facet of the issue and then making a  
25 decisive decision.

26 THE COMMISSIONER: I think, in  
27 fact, that would be a very proper mode of  
28 adjustment.

29 MR. I. FRAM: This is rather  
30 interesting because it refers to what we were



1 talking about a moment ago. There were two  
2 representatives of each group plus the  
3 arbitrator - a panel - a panel of five and  
4 the issues were examined by this panel.

5 Invariably this became common procedure. The  
6 union group was directed not to vote against  
7 the unions' position at all times. Now, this is  
8 rather important.

9 THE COMMISSIONER: Will you  
10 continue, please?

11 MR. I. FRAM: The two union  
12 represenatives on the panel were told that  
13 they must always support the union's contentions  
14 and as a result the decision - it was so  
15 obvious the decision should have gone against  
16 the union - but in order to reach a conclusion  
17 one company representative voted with the  
18 union representatives contrary to all decent  
19 practices and the decision went against the  
20 employer.

21 I took the matter up with Professor  
22 Finkleman as I was not sitting on the panel. I  
23 asked him, "How on earth could such a decision  
24 be made in all good sense?" and he said, "Well,  
25 it was not me who made the decision. I was bound  
26 by a majority decision", and he outlined  
27 the circumstances.

28 I made it my business to eliminate  
29 what we called at that time commissioners and  
30 left one civil arbitrator. Eventually, we





1 got the union to agree because as a result  
2 of that decision I in turn, to retaliate,  
3 instructed the employer representatives on  
4 this commission to protect the employer's position  
5 regardless of any facts that were put in;  
6 in other words, it created a deadlock  
7 and when we had had sufficient deadlocks - this  
8 was the picture of a transitionary period leading  
9 to the position we find later on, that we  
10 realized there was no conclusion possible  
11 under those circumstances and we then agreed  
12 that we would have an arbitrator who would  
13 be the sole arbitrator to make decisions and  
14 make them binding and as a result that  
15 went into effect and as a result further I had the  
16 same procedure introduced into New York as  
17 a result of my experience here.

18 MR. POLLOCK: Also in  
19 Montreal as well.

20 MR. I. FRAM: Also in Montreal  
21 too. This has proven the importance and  
22 value of an arbitrator who can make decisions  
23 and make them binding.

24 THE COMMISSIONER: I wish you  
25 could persuade some of the employers on the  
26 soundness of that view.

27 MR. I. FRAM: I mention that over  
28 and over again in articles in the press and  
29 in talks at various times.

30 THE COMMISSIONER: What was



1 the name of the labour leader in New York?

2 MR. I. FRAM: Dubinski was  
3 the President at that time of the I.G.W.U.,  
4 but the arbitrator, the individual arbitrator  
5 in New York - I will get his name.

6 THE COMMISSIONER: Hillman  
7 was the man I had in mind.

8 MR. I. FRAM: Hillman was  
9 the head of the Amalgamated Clothing Workers.  
10 Dubinski was the head of the International  
11 Lady Garment Workers Union.

12 THE COMMISSIONER: What was  
13 the name of the union that Hillman was head  
14 of?

15 MR. I. FRAM: Amalgamated  
16 Clothing Workers of America and the other was  
17 the International Garment Workers Union with  
18 whom I had dealings.

19 MR. POLLOCK: The arbitrator  
20 in Montreal is Carl Goldenberg.

21 MR. I. FRAM: Carl Goldenberg  
22 was the arbitrator in Montreal and before him  
23 there was one who was in this position and  
24 who passed away, unfortunately. He preceded  
25 Carl Goldenber and then Carl Goldenberg took  
26 over.

27 MR. POLLOCK: How many  
28 arbitrations have you actually had during  
29 this period of time?

30 MR. I. FRAM: From then until



1 I retired?

2 MR. POLLOCK: Well, yes, up  
3 until today's date.

4 MR. I. FRAM: I would say  
5 that recently there have been very, very few  
6 if any. I was invited to participate in one  
7 three years ago but I would say that from 1937  
8 until, let us say, now, there have been about  
9 60 of them - 60 anyhow. We had 17 in one  
10 year.

11 MR. POLLOCK: The ability  
12 to pay in the needle trade industry is  
13 really the determining factor, isn't it?

14 MR. I. FRAM: Well, not  
15 entirely, there are conditions prevailing  
16 in various plants that have to be regulated  
17 and controlled. There are instances of  
18 dismissals, discharges and so on but the  
19 ability to pay is more or less standardized  
20 today.

21 MR. POLLOCK: Yes, but that  
22 is probably the reason why the arbitration  
23 can't work in that atomosphere.

24 MR. I. FRAM: Very, very few  
25 arbitrations dealt with the ability to pay  
26 and the rates. This is the most surprising  
27 thing of all. Very few dealt with the rates  
28 of pay. The astonishing thing was - I am  
29 sort of more or less going into trade terms  
30 and it may be important to you - there is





1 established what I had established, a unit  
2 costing basis. Now the unit costing basis  
3 determines the production cost of any given  
4 item based on the labour content which is  
5 broken down to fine detail and then calculated  
6 in total and this applies in variations to  
7 the level of everything in common use.

8 THE COMMISSIONER: You had  
9 a united organization of employers.

10 MR. I. FRAM: Yes, that is  
11 a very strong organization today. It was  
12 again, an educational process. I am thinking  
13 back and I would relate their mentality and  
14 their attitudes of 30 years ago to the  
15 overwhelming percentage of employers today.  
16 The employers today are thinking in terms  
17 of what these fellows thought in the thirties.

18 THE COMMISSIONER: Exactly.

19 MR. I. FRAM: And this is  
20 where it is a matter of education and informing .

21 THE COMMISSIONER: I quite agree  
22 and we have actually had an example of where  
23 one employer hired the strikers of another  
24 and boasted about the establishment that he  
25 had thereby created. If you have that  
26 attitude of employers to one another, you  
27 can't do anything in the manner that you  
28 were successful in doing.

29 MR. I. FRAM: The only  
30 unfortunate part of it is - and this I say by



1 speaking to any number of employees in different  
2 industries - there seems to be a tremendous  
3 dread and fear of the union of some monster  
4 who will come along and destroy them. It is  
5 so unrealistic thinking today, because  
6 basically the unions are - and I refer now to  
7 the union management as a general rule - very  
8 level-headed, much more level-headed than  
9 people give them credit for.

10 MR. W. FRAM: Or politically  
11 they are more conservative.

12 MR. I. FRAM: And in addition  
13 to that they have economists and what-have-you  
14 studying conditions and everything else  
15 pertaining to an industry as well as their  
16 own standards of living but it is the  
17 indifference and, shall we say the truculent  
18 attitude of employers where the management  
19 of a union will try to sort of cool them out  
20 and they are then under suspicion because  
21 of their attitudes and you get wildcat strikes  
22 as a result of this but it is not the union  
23 management, it is because of the - shall we  
24 say the careless attitude.

25 THE COMMISSIONER: It could  
26 be pointed out and I think legitimately, that  
27 we do have some unions who, from certain of  
28 their actions you can only infer that there is  
29 not good faith in their dealings.

30 MR. I. FRAM: Yes, I quite grant



1 you that. That will happen in certain circumstances  
2 which I know of too and there again, again we  
3 had a very drastic change in the industrial  
4 picture here in the last 15 or 20 years. We  
5 have had an influx from other countries. These  
6 are now employed in various industries and  
7 the union leadership want to stimulate unionized  
8 activity or union interest or union participation  
9 for these people and the only offer they can  
10 make to them because of the background, because  
11 of the lack of knowledge and experience and  
12 knowledge of unions as such, is to stimulate  
13 them by some rather overly energetic attitudes  
14 and thinking. This is what you will find,  
15 for example, as we had in the construction  
16 industry because they want to get these people  
17 sort of to a point where they will lean on them  
18 and feel that they have become the tin gods  
19 to whom they must go.

20 THE COMMISSIONER: Yes, we have  
21 had evidence to that effect.

22 MR. I. FRAM: These things have  
23 happened unquestionably, but that is the  
24 exception, not the rule.

25 THE COMMISSIONER: By the way,  
26 are you living in Toronto?

27 MR. I. FRAM: Oh, yes.

28 THE COMMISSIONER: Have we your  
29 address?

30 MR. I. FRAM: I would be very





1 glad to give it to you. You have my office  
2 address.

3 MR. POLLOCK: So that, so far  
4 as your arbitration experience is concerned,  
5 the arbitrator has not been plagued by the  
6 difficulty in determining the criteria as  
7 to how much a man is worth.

8 MR. FRAM: Generally, no.  
9 That may happen, yes. I refer now to the  
10 collective bargaining. There have been  
11 instances where the union has come along and  
12 demanded, let us say, to illustrate the point,  
13 a ten per cent increase in overall, or whatever  
14 the case may be. These matters have gone  
15 to the arbitrator, yes. That is an industry-wide  
16 increase, not in isolated companies or  
17 isolated organizations, and there again, the  
18 facts were examined and again I recall a case  
19 in point where such a demand was made in the  
20 course of negotiations for a new contract  
21 which, incidentally, was started many months  
22 prior to the examination of the existing  
23 contract where the union had forwarded a  
24 demand for a substantial increase and we felt  
25 that it was unwarranted at the time, at that  
26 particular time it was unwarranted. The matter  
27 was referred again to the impartial chairman,  
28 Professor Finkleman, and he found again on  
29 examining the conditions of the industry and  
30 the overall economic picture that was prevailing



1 at the time, that there was no justification  
2 and no increase was permitted. It was accepted  
3 by the union, albeit with downcast face.

4 THE COMMISSIONER: There must  
5 have been a very substantial trust in the  
6 attitudes of employers and employees.

7 MR. I. FRAM: Yes.

8 THE COMMISSIONER: That was  
9 the condition of your success.

10 MR. I. FRAM: Yes, it goes  
11 back to the time now, the overall story; if  
12 you take a dog and you whip him hard enough  
13 he will begin to beg and do things that he  
14 wouldn't do otherwise. They had been badly  
15 whipped and hurt in the early thirties. In  
16 1931 there was a vicious strike, perhaps one  
17 of the worst in the history of the needle  
18 trades where, again, every conceivable means  
19 of strike breaking and battling was used -  
20 police, the knock-out of people, you couldn't  
21 imagine anything that is used today in fighting  
22 a strike that was not used at that time and,  
23 as is pointed out in the brief, the result  
24 was both parties suffered. The union was  
25 decimated, the industry was decimated very,  
26 very badly and then they realized - and this  
27 is the time they realized "Well, what are  
28 we batting our heads against the wall for?"  
29 What was the ultimate result? The industry  
30 had gone, the employees were starving.



1 THE COMMISSIONER: Is there  
2 any history of that period written?

3 MR. I. FRAM: Oh, yes there  
4 is.

5 THE COMMISSIONER: Does it  
6 give a more or less realistic account of  
7 what actually took place as you have  
8 described it?

9 MR. I. FRAM: Yes, as a matter  
10 of fact, there is a history. It is in a  
11 book -- I have a copy in my office of this  
12 book giving the history of the strike along  
13 with a similar strike which took place under  
14 similar circumstances in New York outlining  
15 what had taken place at that time and, as a  
16 result of these strikes, the one in New York  
17 and the one here, there was a realization  
18 that "We have got to get down to some more  
19 practical basis in approaching industrial  
20 problems" and then, as I say, we started  
21 that after this strike and after this holocaust.

22 THE COMMISSIONER: Could you  
23 let me have, sometime, the name of that book?

24 MR. I. FRAM: It was the history  
25 of the I.G.W. and the writer was Devine.  
26 I will get you the information on that book.

27 MR. POLLOCK: I suppose really  
28 what you are saying is that if the heat gets  
29 hot enough, then even steel melts.

30 MR. I. FRAM: Exactly, and the





1 point is that as a result of what had  
2 transpired in those years, as I mentioned, a  
3 group came to me and I said "Now where are  
4 we heading here". They are in the business,  
5 they have their livelihood to make, what do  
6 we do from here, and I told them the first thing  
7 is "Make up your minds that the unions are here,  
8 they have a function to perform as you have  
9 a function to perform, get together and stop  
10 banging each other's heads together but rather  
11 talk and understand each other's circumstances  
12 and each other's needs and when you have made  
13 up your mind to do that, then come back and  
14 see me", which is what they did.

15 THE COMMISSIONER: Do you think  
16 that the situation is so unique and special  
17 that your conclusion would not apply generally?

18 MR. I. FRAM: It would apply  
19 generally because the result of what  
20 transpired is simply a matter of attitude. Once  
21 the attitude was reconciled with the living facts  
22 then you could begin to move constructively.

23 THE COMMISSIONER: I don't  
24 think that could be challenged in any way.  
25 There is no doubt about that. It is a  
26 fundamental change in attitude.

27 MR. I. FRAM: This is all  
28 that matters and as a matter of fact it would  
29 be astounding to find that union leadership  
30 as a whole is more concerned with industrial



1 peace than are employers. This might be a  
2 surprising statement but it is a truthful  
3 statement.

4 THE COMMISSIONER: That lies  
5 behind the facade which is put up.

6 MR. I. FRAM: Very definitely.  
7 We live more or less from day to day. They know  
8 they have their problems to face and they  
9 want to retain that which is important to  
10 them commercially - shall we say the following  
11 or the respect of the whole membership which  
12 is one of the main responsibilities of union  
13 leadership and it is the responsibility of  
14 management and employers to see that that  
15 respect is maintained, not by taking a dog-in-  
16 the-manger attitude on all issues.

17 This is why I have suggested that  
18 instead of negotiating as, unfortunately, we  
19 have known in the railway strike last year,  
20 sit on their seats and let each one talk and  
21 talk themselves blue in the face and then  
22 shrug their shoulders and walk out. These  
23 things go back to the union membership. They  
24 report now, try and visualize what happens  
25 when a union officer reports what has transpired  
26 during the conference. Then the emotions  
27 come to the surface.

28 THE COMMISSIONER: Do you think  
29 that those who view that critically are the  
30 little people in the union?



1 MR. I. FRAM: I would say not.

2 THE COMMISSIONER: It seems  
3 to me that you have, without detracting at all  
4 from the fact that leadership is bound to  
5 a certain extent to express itself, nevertheless,  
6 the solid, sensible judgment which is often  
7 kept silent.

8 MR. I. FRAM: You will usually  
9 find - and I have had occasion, I was  
10 invited to address union meetings and you will  
11 usually find that they are sitting sort of silent  
12 and observing and wondering what the score is  
13 and what the future holds for them and it  
14 will take one rambunctious individual to  
15 get up and throw a very caustic remark about  
16 the report and what was said and that starts  
17 an inflammable situation. This is what  
18 usually happens.

19 MR. W. FRAM: If I may add, Mr.  
20 Commissioner, as a sort of summation to what you were  
21 suggesting on compulsory arbitration, my own  
22 view that it would be<sup>a</sup> most civilized and  
23 practical situation if we had free, collective  
24 bargaining and then on the failure of free  
25 collective bargaining, compulsory arbitration.  
26 But I suggest that it is politically, an  
27 unrealistic view to expect that a recommendation  
28 of that kind would be acceptable to any  
29 government, any legislature that likely had  
30 power in this province in the near future.





1 It is suggested, though, that they might be  
2 able to get in by the back door and have a  
3 code of arbitration.

4 THE COMMISSIONER: What do  
5 you mean by that?

6 MR. W. FRAM: There is  
7 relatively little law available in the labour  
8 relations field. If there was such an  
9 animal as compulsory arbitration - and let  
10 us suppose for argument sake that a statute  
11 was passed at the next sitting providing for  
12 compulsory arbitration - there would have to  
13 be a well drawn and well thought out statute  
14 providing for the mechanics of arbitration,  
15 the measuring sticks to be used and that sort  
16 of thing. There would then have to be built  
17 up a cadre of individuals who are skilled  
18 in the application of arbitration and who  
19 were respected in the application of arbitration.  
20 This, I suggest, we do not have now and it  
21 would take some time to build that up.

22 MR. POLLOCK: We have got the  
23 hospital arbitration.

24 MR. W. FRAM: That is the only  
25 code of sorts as to arbitration and it is an  
26 inexact instruction as to the arbitrator.

27 MR. POLLOCK: You are going  
28 to give us some exact terms, are you?

29 MR. W. FRAM: No, I am not, but  
30 I am suggesting this, sir, that a practical



1 application of the question is that labour  
2 relations matters, collective bargaining,  
3 would continue as now. There would be, as  
4 I suggest, a correction as to problems  
5 that many others have mentioned before you  
6 as to the actual hearing of injunctions, the  
7 application of the injunction procedure.  
8 There should be, I suggest, a provision for  
9 arbitration in essential industries, industries  
10 of a public nature, plus a provision in the  
11 Act that in situations deemed by the cabinet  
12 in the public interest - this would be a  
13 political decision they would have to make from  
14 the individual approach - that the same  
15 arbitration act would apply and thus, over  
16 the years, a law of arbitration could be  
17 built up and a group of skilled individuals  
18 could be developed. Now this is a problem,  
19 the skilled individual problem is a problem  
20 we have in this jurisdiction right now in  
21 that judges, as you know, are in effect shortly  
22 to be prohibited from sitting as arbitrators.  
23 There have been no real steps, in my submission,  
24 taken to develop a group of arbitrators.

25 THE COMMISSIONER: What would  
26 you suggest as to the training of arbitrators?

27 MR. W.FRAM: You would have  
28 to start with good people, they would have to  
29 be well paid to attract good people because,  
30 unfortunately, in the labour relations field,



1 lawyers take a view if you become an arbitrator  
2 you cease acting for either side.

3 THE COMMISSIONER: That is the  
4 that  
5 mental training / I think an arbitrator ought  
6 to have, to be able to see things from every  
7 point of view.

8 MR. FRAM: Speaking of a lawyer  
9 in the labour relations field, it would be  
10 ideal if one were permitted to act for management  
11 and for labour, of course, in different  
12 industries, but this is not only malum prohibitum  
13 it is malum in se.

14 MR. POLLOCK: There are odd  
15 lawyers who do act for both sides.

16 MR. FRAM: Very few in Toronto.  
17 I have had my foot in both doors and it is a  
18 little dangerous at times.

19 MR. POLLOCK: There are some.

20 THE COMMISSIONER: You are  
21 inclined to be tainted.

22 MR. FRAM: You are, yes, there  
23 has to be a corps of arbitrators built up and  
24 for no other reason than our present arbitration  
25 within the collective agreement. The authorities  
26 are really, with due respect to the authorities,  
27 not building up a corp of trained arbitrators.

28 THE COMMISSIONER: I don't see  
29 why there couldn't be a university course  
30 that would look to the training of mental  
attitudes and, of course, it employs some





1 familiarity with economics and industrialism  
2 and that sort of thing, but once you have  
3 that, then at least we have to have a given  
4 quality of mind to begin with.

5 MR. W. FRAM: There is no  
6 reason why a good group could not be built up,  
7 but to my knowledge, no real steps have been  
8 taken to construct such a group. There are  
9 a certain number available, of course, but  
10 there are a lot more needed.

11 MR. POLLOCK: Necessity is  
12 the mother of invention.

13 MR. W. FRAM: Except when you  
14 see some of the decisions rendered by certain  
15 boards of arbitration and become involved  
16 with certain boards of arbitration you wonder  
17 where the system is going to go.

18 MR. POLLOCK: All I say is  
19 when the judges leave us, then there will be  
20 a crisis.

21 MR. W. FRAM: June the 1st is  
22 coming on us very soon. This is the date  
23 I hear about.

24 MR. POLLOCK: It is like a  
25 strike deadline.

26 MR. W. FRAM: That is the  
27 strike deadline. We will have a collective  
28 bargaining dispute just prior to that.

29 My submission, though, is that  
30 if such a code is promulgated, if such a law



1 of arbitration is promulgated by the legislature,  
2 then we will have a starting point. Of course,  
3 any statute developed today - I say this with  
4 all respect to those who have drawn it -  
5 any statute today would have to be tested  
6 in practice and it would have to be changed  
7 throughout the years so that if and when  
8 civilization approaches the labour relations  
9 field in the full sense, you will then have  
10 a workable and local law of arbitration that  
11 has been worked through, thought through  
12 and is practicable.

13                   These are really separate and  
14 ancillary matters to what we have talked  
15 about before, as to what are contained in the  
16 brief.

17 (Mr. Fram continues with brief from, "While  
18 the present Labour Relations Act.." on page  
19 11, down to, "...presently arises under Item  
20 (b)." on page 12.)

21                   MR. POLLOCK: Do you mean that  
22 people ought to talk more and listen less?

23                   MR. W. FRAM: I think what  
24 was intended there - that people, when they  
25 are meeting, should engage in honest bargaining  
26 months prior to the deadline. There are  
27 some people in the field who delight in the  
28 drama of getting down to real negotiations,  
29 a day or two days prior to the termination of  
30



1 the agreement. I have done this myself, they  
2 deliberately hold off real bargaining until  
3 after the agreement is over and you have a  
4 situation where you are going to get answers.  
5 This works both ways, of course, because you  
6 can't give an offer. The way things stand  
7 now, you can't give an offer six months prior  
8 to the expiration of the agreement without  
9 it being taken as an admission of weakness  
10 type of thing. You should hold that right  
11 to the end and then give the offer supposedly  
12 when you are coerced to give it when you have  
13 been prepared to give it for months.

14 (Mr. Fram continues reading brief from, "Under  
15 Item (c) legislation.." down to, "The whole  
16 of which is respectfully submitted." page 12.)  
17

18 Mr. Pollock, Mr. Commissioner  
19 asked me to say a few words - and I apologize  
20 that they are extemporaneous purely and this  
21 is on a subject that I understand has not  
22 been brought before you previously or at  
23 least to any great degree which is the Industrial  
24 Standards Act. It is a provincial enactment,  
25 as you know, which is somewhat similar to the  
26 Collective Decrees Act, I believe it is called  
27 in Quebec - Extension of Agreement Act. It  
28 is an act of which the mechanics are this,  
29 that in a given industry - the way the act is  
30 worded is, If employers and employees who hold





1 in effect, a majority position in the industry  
2 make application to the Minister for a  
3 schedule of maximum hours and minimum wages  
4 to be prepared and made effective , the Minister  
5 then has a conference called, an investigation  
6 made by an officer of the Department, a  
7 conference is called where representations  
8 are taken and if the Minister is satisfied  
9 that the suggested wages and maximum hours  
10 are agreed to by a majority in the industry,  
11 a schedule, which is a regulation under the  
12 Act is then passed, which effectively applies  
13 those minimum wages and maximum hours and  
14 other working conditions to the given industry.

15 THE COMMISSIONER: Throughout  
16 the province?

17 MR. W. FRAM: In some cases  
18 throughout the province and in some cases not.  
19 In geographical regions, usually. There are  
20 two types of industry looked to in the Act;  
21 the first are industries which are inter-  
22 provincially competitive, in other words, to  
23 speak specifically of the dress and sports  
24 industry, I act for the advisory committee  
25 in that industry. That industry is inter-  
26 provincially competitive with a similar industry  
27 in Montreal and to a lesser degree, one in  
28 Quebec. There is some production in Edmonton.  
29 The way the act is drawn, this goes back to  
30 I think 1933 or 1934 ---



1 THE COMMISSIONER: I think there  
2 was an appeal on the constitutional methods.

3 MR. POLLOCK: Men's and boy's  
4 wear.

5 MR. W. FRAM: Men's and boy's  
6 wear, Tolton. There was a trip overseas on  
7 that. That case held that the assessment  
8 that was levied on employers and employees  
9 on the industry to pay for administration in  
10 a given schedule, was a direct tax by the  
11 province. I think that was the main issue  
12 when it went to the privy council.

13 THE COMMISSIONER: It was  
14 really compensation for services.

15 MR. W. FRAM: Yes, that the  
16 services were provided and this was a direct  
17 tax to pay for those. And the advisory committee  
18 are given authority to administer their own  
19 industry. They are given the power to levy  
20 a maximum of one per cent on employees and  
21 employers to pay the expenses of administration.  
22 The other industries are administered directly  
23 by the Department of Labour with the assistance  
24 of an advisory committee. There is an advisory  
25 committee in the case of the auto industry.  
26 There is a committee appointed by the Minister.  
27 Under the Act it doesn't say so, but as a matter  
28 of practice the chairman is usually a neutral  
29 and there are two representatives of labour and  
30 two of management. I think it needs some 75



1 per cent agreement to gain a majority in any  
2 industry.

3 The effect of a schedule is  
4 this: firstly, many union people do not like  
5 the Industrial Standards Act. They have no  
6 great desire to cooperate in obtaining the  
7 schedule because of the fact that they feel  
8 that it interferes with their organization  
9 of unorganized individuals because the  
10 individuals tend to get wages close to what  
11 are obtained by collective bargaining, some  
12 10 or 15 per cent less perhaps but close and  
13 it takes a lot of leverage away from union  
14 organizing. Manufacturers, speaking of the  
15 needle trade, have been for some time quite  
16 strongly in favour of it because it brings  
17 in one of the essential purposes, at least  
18 professed purposes of the Act when it was  
19 passed in the legislative which was to do  
20 away with unfair competition.

21 Let us take it this way; Without  
22 an Industrial Standards Act schedule in the  
23 ladies' dress and sports industry, you have  
24 a labour cost difference between union shops  
25 and non-union shops of 20 per cent. Would that  
26 be fair?

27 MR. I. FRAM: It is rather  
28 high, less than that.

29 MR. W. FRAM: Shall we say  
30 10 to 15 per cent. With the Industrial Standards





1 schedule, the cost differential is cut down  
2 to about 8 to 10 percent and therefore, it  
3 is an advantage to management on cost. It is  
4 also an advantage to organized employers in that  
5 hours are restricted. In the needle trades  
6 this is very important because it means that  
7 when it comes to getting out special goods  
8 to the retail trade, all manufacturers  
9 have the same problem of not being able to  
10 work Saturday mornings without a permit, et  
11 cetera, and they cannot beat competition by  
12 working through Sunday, which could easily,  
13 otherwise, be done.

14           The question of other merits  
15 of the Act is: I would suggest there is a  
16 very obvious merit to the Industrial  
17 Standards Act schedule applying to the  
18 needle trades because there you have a  
19 continual influx of immigrants today, and I  
20 am not talking of the Italian immigrant group  
21 coming in ten years ago but today you have  
22 new immigrants coming in, Portuguese, Chinese,  
23 et cetera who really don't know anything about  
24 local conditions are very easily taken advantage  
25 of. Under the schedule there is an excellent  
26 control of wages paid to them. Certain  
27 employers who would otherwise gouge, are  
28 forced to pay minimum wages to these people.

29           One of the areas where an  
30 Industrial Standards Act schedule, if properly



1 administered and properly financed, can be of  
2 immense use, I suggest, is another area of  
3 labour activity that I am quite familiar with,  
4 which is the residential construction industry.  
5 No one need worry about the commercial  
6 construction field, at least not in the sense  
7 of helping people. It is well organized and  
8 well self-policed. However, the residential  
9 construction industry is a horse of a different  
10 colour, at least as far as the Toronto area goes.  
11 There is a very small degree of union activity  
12 and there is a very small ineffectual degree  
13 of employer cooperation or employer associations  
14 in the residential industry.

15 MR. POLLOCK: There is probably  
16 a very low degree of employer stability. They  
17 are in and out faster in that industry.

18 MR. W. FRAM: There tends to  
19 be, yes, a great deal of instability also  
20 except in today's market there is a tendency  
21 for the unstable ones to be out of it rather  
22 early in the game.

23 THE COMMISSIONER: To what  
24 industries does it presently apply?

25 MR. W. FRAM: The schedules  
26 under it is, firstly, the barbering and hair  
27 dressing industry. Many of those - local  
28 barbering schedules through the province  
29 which are effective in keeping that trade at  
30 a reasonable level of income.



1 THE COMMISSIONER: And that is  
2 the only one?

3 MR. W. FRAM: No, there are  
4 the interprovincially competitive ones, there  
5 are existing and useful Industrial Standards  
6 Acts schedules in the dress and sports industry,  
7 ladies' cloak and suit, men's wear, ---

8 MR. POLLOCK: Apart from the  
9 needle trade?

10 MR. W. FRAM: Apart from the  
11 needle trades there is no interprovincial ones.

12 MR. POLLOCK: What about the  
13 construction industry?

14 MR. W. FRAM: There are many,  
15 many in the construction industry. There are  
16 plumbers, electricians in certain areas,  
17 bricklayers, I know in Toronto have them.

18 THE COMMISSIONER: Have what?

19 MR. W. FRAM: A schedule which  
20 sets out minimum wages.

21 THE COMMISSIONER: Prescribed  
22 under this Act?

23 MR. W. FRAM: Prescribed under  
24 the Industrial Standards Act and in the  
25 residential construction field that is the  
26 only - I say this out of all respect to my  
27 few good friends in that field - the Industrial  
28 Standards schedules that do exist are the only  
29 thing which helps maintain a decent level  
30 of wages and helps to control the fly-by-nighter.





1 THE COMMISSIONER: What is the  
2 level that they control in the matter of the  
3 barbering?

4 MR. W. FRAM: They actually  
5 control the price per hair cut, the minimum.

6 THE COMMISSIONER: I was  
7 wondering what the minimum was? I know what  
8 the maximum is.

9 MR. W. FRAM: I think the  
10 minimum is what most of them charge now, at  
11 the moment \$1.75 or \$1.50 possibly. The  
12 minimum is what most charge.

13 MR. I. FRAM: There is also  
14 the percentage that the working barber has  
15 to receive which is laid down under the  
16 schedule.

17 MR. W. FRAM: For example,  
18 using the bricklaying industry in the residential  
19 construction industry, the schedule there is  
20 extremely useful and the rates under the  
21 schedule are the same rates as pertain under  
22 the collective agreement applying to residential  
23 bricklayers. However, there is relatively  
24 little actual organization of residential  
25 bricklayers. There are many non-union ones,  
26 there are many ostensible union members who  
27 will casually help for a non-union employer  
28 so that the schedule is extremely important  
29 to unionization in that field but the same  
30 people of course, the union, and employers who



1 are desirous of, say, a civilized or moral code  
2 of behaviour in the industry are those who  
3 sit on the advisory committee and they do  
4 enforce, as best they are able under the Act,  
5 they do their best to enforce the minimum wage  
6 requirements and Saturday work requirements,  
7 et cetera, so that there is a great help in  
8 that area given to organization of labour.

9 MR. POLLOCK: Thank you very  
10 much. Thank you, Mr. Fram, Sr. It was an  
11 excellent preparation.

12 THE COMMISSIONER: It has been  
13 a privilege, Mr. Fram, to get the benefit of  
14 your knowledge. You may hear from us later.

15 MR. I. FRAM: Thank you very  
16 much. Apropos of what my son just talked  
17 about, I was rather amused by this chap,  
18 Lorenzo, you have probably read about it.

19 MR. POLLOCK: Do you want  
20 this on the record?

21 MR. I. FRAM: No, it is not  
22 libellous, I am simply quoting - in which he  
23 made an appeal to the manpower committee saying -  
24 this is the general thought that he tried to  
25 convey - that in immigration it should not  
26 be a matter of concern to get immigrants from  
27 Italy but rather let us get them from the  
28 country, these people want to work, wages  
29 are unimportant, they want to work and let us  
30 get them in from the villages and country



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1 communities and not from the town because there  
2 they are concerned with economics - they want  
3 to be paid, or words to that effect. This is  
4 an indication of the need for an effective  
5 control where immigrants can be exploited.  
6 This is the point.

7 MR. POLLOCK: Thank you again,  
8 gentlemen.

9 This Commission is adjourned  
10 until 10:00 o'clock tomorrow morning.

11 ---Adjournment until 10:00 a.m., April 19th, 1967  
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